

VOLUME I  
CHAPTERS 1 THROUGH 292

# **LAWS**

PASSED AT  
**The Sixty-first Session**  
OF THE  
**Legislative Assembly**  
OF THE  
STATE OF NORTH DAKOTA

BEGUN AND HELD AT BISMARCK, THE CAPITAL, ON  
TUESDAY, JANUARY 6, 2009, AND  
CONCLUDING MONDAY, MAY 4, 2009



# AUTHENTICATION

---

## STATE OF NORTH DAKOTA Department of State, Bismarck

I, Alvin A. Jaeger, Secretary of State, certify that the laws contained herein are true and correct copies, except clerical errors, of the laws and resolutions passed at the Sixty-first Session of the Legislative Assembly of the State of North Dakota, beginning Tuesday, January 6, 2009, and concluding Monday, May 4, 2009, and also of the constitutional amendments submitted at the primary election held June 10, 2008; and the initiated measure submitted at the general election held November 4, 2008.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Dakota, this first day of July 2009.

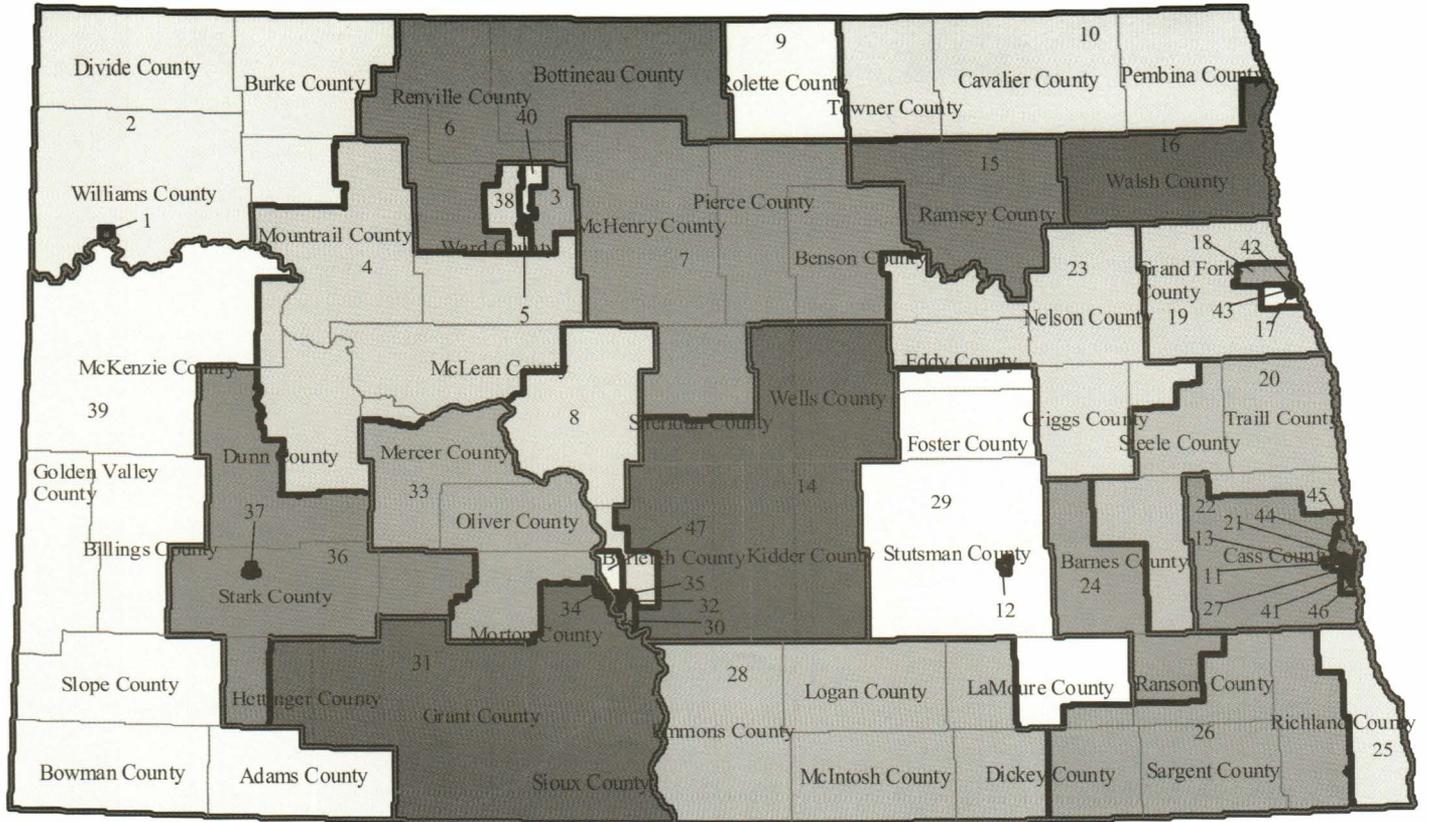
(SEAL)

ALVIN A. JAEGER  
Secretary of State

Jim W. Smith, John Walstad, and Jeffrey N. Nelson of the Legislative Council certify that we have prepared the contents of these volumes and that the measures, laws, and resolutions contained herein are true and correct copies of the original measures, laws, and resolutions on file in the office of the Secretary of State in the State Capitol at Bismarck, North Dakota, clerical errors excepted.

JIM W. SMITH  
JOHN WALSTAD  
JEFFREY N. NELSON





### LEGISLATIVE DISTRICTS

Legislative Districting Effective During the Sixty-first Legislative Session



**MEMBERS OF THE SIXTY-FIRST LEGISLATIVE ASSEMBLY  
State of North Dakota, January 6, 2009, to May 4, 2009**

vii

**SENATE  
President - Lieutenant Governor Jack Dalrymple, Casselton  
Secretary - Fran Gronberg, Bismarck**

<b>Dist.</b>	<b>County</b>	<b>Name</b>	<b>Affil.</b>	<b>Address</b>
1	Pt. Williams	Stanley W. Lyson	R	Williston
2	Burke, Divide, Pt. Mountrail, Pt. Williams	John M. Andrist	R	Crosby
3	Pt. Ward	Robert M. Horne	D	Minot
4	Pt. Dunn, Pt. McKenzie, Pt. McLean, Pt. Mercer, Pt. Mountrail, Pt. Ward	John Warner	D	Ryder
5	Pt. Ward	Tom Seymour	D	Minot
6	Bottineau, Renville, Pt. Ward	David O'Connell	D	Lansford
7	Pt. Benson, McHenry, Pierce, Pt. Sheridan	Ryan M. Taylor	D	Towner
8	Pt. Burleigh, Pt. McLean	Layton W. Freborg	R	Underwood
9	Rolette	Richard Marcellais	D	Belcourt
10	Cavalier, Pt. Pembina, Pt. Towner	Curtis Olafson	R	Edinburg
11	Pt. Cass	Tim Mathern	D	Fargo
12	Pt. Stutsman	Dave Nothing	R	Jamestown
13	Pt. Cass	Judy Lee	R	West Fargo
14	Pt. Burleigh, Kidder, Pt. Sheridan, Wells	Jerry Klein	R	Fessenden
15	Ramsey, Pt. Towner	Dave Oehlke	R	Devils Lake
16	Pt. Pembina, Walsh	Joe Miller	R	Park River
17	Pt. Grand Forks	Ray Holmberg	R	Grand Forks
18	Pt. Grand Forks	Constance Triplett	D	Grand Forks
19	Pt. Grand Forks	Arthur H. Behm	D	Niagara
20	Pt. Barnes, Pt. Cass, Pt. Steele, Traill	Elroy N. Lindaas	D	Mayville
21	Pt. Cass	Carolyn Nelson	D	Fargo
22	Pt. Cass	Gary A. Lee	R	Casselton
23	Pt. Benson, Pt. Eddy, Griggs, Nelson, Pt. Steele	Joan Heckaman	D	New Rockford
24	Pt. Barnes, Pt. Ransom	Larry J. Robinson	D	Valley City
25	Pt. Richland	Arden C. Anderson	D	Wahpeton
26	Pt. Dickey, Pt. LaMoure, Pt. Ransom, Pt. Richland, Sargent	Jim Dotzenrod	D	Wyndmere
27	Pt. Cass	Jim Pomeroy	D	Fargo
28	Pt. Dickey, Emmons, Pt. LaMoure, Logan, McIntosh	Robert S. Erbele	R	Lehr
29	Pt. Eddy, Foster, Pt. LaMoure, Pt. Stutsman	Terry M. Wanzek	R	Jamestown
30	Pt. Burleigh	Bob Stenehjem	R	Bismarck
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	Aaron Krauter	D	Regent
32	Pt. Burleigh	Dick Dever	R	Bismarck
33	Pt. Mercer, Pt. Morton, Oliver	Randel Christmann	R	Hazen
34	Pt. Morton	Dwight Cook	R	Mandan
35	Pt. Burleigh	Tracy Potter	D	Bismarck
36	Pt. Dunn, Pt. Hettinger, Pt. Morton, Pt. Stark	George Nodland	R	Dickinson
37	Pt. Stark	Rich Wardner	R	Dickinson
38	Pt. Ward	David Hogue	R	Minot
39	Adams, Billings, Bowman, Golden Valley, Pt. McKenzie, Slope	Bill Bowman	R	Bowman
40	Pt. Ward	Karen K. Krebsbach	R	Minot
41	Pt. Cass	Tony S. Grindberg	R	Fargo
42	Pt. Grand Forks	Mac Schneider	D	Grand Forks
43	Pt. Grand Forks	JoNell A. Bakke	D	Grand Forks
44	Pt. Cass	Tim Flakoll	R	Fargo
45	Pt. Cass	Tom Fiebiger	D	Fargo
46	Pt. Cass	Tom Fischer	R	Fargo
47	Pt. Burleigh	Ralph L. Kilzer	R	Bismarck

**HOUSE OF REPRESENTATIVES**  
**Speaker - David Monson, Osnabrock**  
**Chief Clerk - Buell Reich, Bismarck**

Dist.	County	Name	Affil.	Address
1	Pt. Williams	Patrick R. Hatlestad	R	Williston
1	Pt. Williams	Gary R. Sukut	R	Williston
2	Burke, Divide, Pt. Mountrail, Pt. Williams	Bob Skarphol	R	Tioga
2	Burke, Divide, Pt. Mountrail, Pt. Williams	David S. Rust	R	Tioga
3	Pt. Ward	Kari L. Conrad	D	Minot
3	Pt. Ward	Lisa Wolf	D	Minot
4	Pt. Dunn, Pt. McKenzie, Pt. McLean, Pt. Mercer, Pt. Mountrail, Pt. Ward	Tom Conklin	D	Douglas
4	Pt. Dunn, Pt. McKenzie, Pt. McLean, Pt. Mercer, Pt. Mountrail, Pt. Ward	Kenton Onstad	D	Parshall
5	Pt. Ward	Louis Pinkerton	D	Minot
5	Pt. Ward	Elwood Thorpe	D	Minot
6	Bottineau, Renville, Pt. Ward	Glen Froseth	R	Kenmare
6	Bottineau, Renville, Pt. Ward	Bob Hunskor	D	Newburg
7	Pt. Benson, McHenry, Pierce, Pt. Sheridan	Jon Nelson	R	Wolford
7	Pt. Benson, McHenry, Pierce, Pt. Sheridan	Arlo Schmidt	D	Maddock
8	Pt. Burleigh, Pt. McLean	Jeff Delzer	R	Underwood
8	Pt. Burleigh, Pt. McLean	Dwight Wrangham	R	Bismarck
9	Rolette	Tracy Boe	D	Mylo
9	Rolette	Merle Boucher	D	Rolette
10	Cavalier, Pt. Pembina, Pt. Towner	Chuck Damschen	R	Hampden
10	Cavalier, Pt. Pembina, Pt. Towner	David Monson	R	Osnabrock
11	Pt. Cass	Mary Ekstrom	D	Fargo
11	Pt. Cass	Scot Kelsh	D	Fargo
12	Pt. Stutsman	Lyle Hanson	D	Jamestown
12	Pt. Stutsman	Joe Kroeber	D	Jamestown
13	Pt. Cass	Kim Koppelman	R	West Fargo
13	Pt. Cass	Alon C. Wieland	R	West Fargo
14	Pt. Burleigh, Kidder, Pt. Sheridan, Wells	Duane DeKrey	R	Pettibone
14	Pt. Burleigh, Kidder, Pt. Sheridan, Wells	Robin Weisz	R	Hurdsfield
15	Ramsey, Pt. Towner	Curt Hofstad	R	Devils Lake
15	Ramsey, Pt. Towner	Dennis Johnson	R	Devils Lake
16	Pt. Pembina, Walsh	Robert Kilichowski	D	Minto
16	Pt. Pembina, Walsh	Joyce M. Kingsbury	R	Grafton
17	Pt. Grand Forks	Louise Potter	D	Grand Forks
17	Pt. Grand Forks	Ken Svedjan	R	Grand Forks
18	Pt. Grand Forks	Eliot Glasenheim	D	Grand Forks
18	Pt. Grand Forks	Lonny Winrich	D	Grand Forks
19	Pt. Grand Forks	Chris Griffin	D	Larimore
19	Pt. Grand Forks	Gerry Uglen	R	Northwood
20	Pt. Barnes, Pt. Cass, Pt. Steele, Traill	Richard Holman	D	Mayville
20	Pt. Barnes, Pt. Cass, Pt. Steele, Traill	Lee Kaldor	D	Mayville
21	Pt. Cass	Jasper J. Schneider	D	Fargo
21	Pt. Cass	Steven L. Zaiser	D	Fargo
22	Pt. Cass	Wesley R. Belter	R	Leonard
22	Pt. Cass	Vonnie Pietsch	R	Casselton
23	Pt. Benson, Pt. Eddy, Griggs, Nelson, Pt. Steele	Benjamin A. Vig	D	Aneta
23	Pt. Benson, Pt. Eddy, Griggs, Nelson, Pt. Steele	Don Vigesaa	R	Cooperstown
24	Pt. Barnes, Pt. Ransom	Ralph Metcalf	D	Valley City
24	Pt. Barnes, Pt. Ransom	Phillip Mueller	D	Valley City
25	Pt. Richland	John D. Wall	R	Wahpeton
25	Pt. Richland	Clark Williams	D	Wahpeton
26	Pt. Dickey, Pt. LaMoure, Pt. Ransom, Pt. Richland, Sargent	Bill Amerman	D	Forman
26	Pt. Dickey, Pt. LaMoure, Pt. Ransom, Pt. Richland, Sargent	Jerry Kelsh	D	Fullerton
27	Pt. Cass	Randy Boehning	R	Fargo
27	Pt. Cass	Lee Myxter	D	Fargo
28	Pt. Dickey, Emmons, Pt. LaMoure, Logan, McIntosh	Mike Brandenburg	R	Edgeley
28	Pt. Dickey, Emmons, Pt. LaMoure, Logan, McIntosh	William E. Kretschmar	R	Venturia
29	Pt. Eddy, Foster, Pt. LaMoure, Pt. Stutsman	Craig Headland	R	Montpelier
29	Pt. Eddy, Foster, Pt. LaMoure, Pt. Stutsman	Chet Pollert	R	Carrington
30	Pt. Burleigh	Michael R. Nathe	R	Bismarck
30	Pt. Burleigh	Dave Weiler	R	Bismarck
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	Rod Froelich	D	Selfridge
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	James Kerzman	D	Mott
32	Pt. Burleigh	Mark A. Dosch	R	Bismarck
32	Pt. Burleigh	Lisa Meier	R	Bismarck
33	Pt. Mercer, Pt. Morton, Oliver	Brenda Heller	R	Beulah
33	Pt. Mercer, Pt. Morton, Oliver	Gary Kreidt	R	New Salem
34	Pt. Morton	RaeAnn G. Kelsch	R	Mandan
34	Pt. Morton	Todd Porter	R	Mandan

35	Pt. Burleigh	Karen Karls	R	Bismarck
35	Pt. Burleigh	Bob Martinson	R	Bismarck
36	Pt. Dunn, Pt. Hettinger, Pt. Morton, Pt. Stark	Mike Schatz	R	New England
36	Pt. Dunn, Pt. Hettinger, Pt. Morton, Pt. Stark	Shirley Meyer	D	Dickinson
37	Pt. Stark	Nancy Johnson	R	Dickinson
37	Pt. Stark	Francis J. Wald	R	Dickinson
38	Pt. Ward	Larry Bellew	R	Minot
38	Pt. Ward	Dan Ruby	R	Minot
39	Adams, Billings, Bowman, Golden Valley, Pt. McKenzie, Slope	David Drovdal	R	Arnegard
39	Adams, Billings, Bowman, Golden Valley, Pt. McKenzie, Slope	Keith Kempenich	R	Bowman
40	Pt. Ward	Matthew M. Klein	R	Minot
40	Pt. Ward	Robert Frantsvog	R	Minot
41	Pt. Cass	Al Carlson	R	Fargo
41	Pt. Cass	Bette B. Grande	R	Fargo
42	Pt. Grand Forks	Stacey Dahl	R	Grand Forks
42	Pt. Grand Forks	Corey Mock	D	Grand Forks
43	Pt. Grand Forks	Lois Delmore	D	Grand Forks
43	Pt. Grand Forks	Darrell D. Nottestad	R	Grand Forks
44	Pt. Cass	Donald L. Clark	R	Fargo
44	Pt. Cass	Blair Thoreson	R	Fargo
45	Pt. Cass	Rick Berg	R	Fargo
45	Pt. Cass	Edmund Gruchalla	D	Fargo
46	Pt. Cass	Kathy Hawken	R	Fargo
46	Pt. Cass	Jim Kasper	R	Fargo
47	Pt. Burleigh	George J. Keiser	R	Bismarck
47	Pt. Burleigh	Lawrence R. Klemin	R	Bismarck



## EMPLOYEES

### EMPLOYEES OF THE SIXTY-FIRST LEGISLATIVE ASSEMBLY

#### LEGISLATIVE COUNCIL

Jim W. Smith	Director
Jay E. Buringrud	Assistant Director
Allen H. Knudson	Legislative Budget Analyst and Auditor
John Walstad	Code Revisor
Jeffrey N. Nelson	Assistant Code Revisor
Roxanne Woeste	Assistant Legislative Budget Analyst and Auditor
John Bjornson	Counsel
L. Anita Thomas	Counsel
Vonette J. Richter	Counsel
Timothy J. Dawson	Counsel
Jennifer S. N. Clark	Counsel
Becky Keller	Fiscal Analyst
Brady A. Larson	Fiscal Analyst
Sheila M. Sandness	Fiscal Analyst
Marilyn Johnson	Research Librarian
Patricia Geiger	Office Manager
Jason J. Steckler	Information Technology Director
Maryann F. Trauger	Manager, Information Technology Services
Karen J. Mund	Legislative Administrator
Mary H. Janusz	Information Technology Education Administrator
John A. Dvorak	Information Technology LAN Technician
Deb Gienger	Information Technology Systems Administrator
Charolette Sackman	Information Processing Supervisor
Phyllis Markel	Receptionist
Audrey Grafsgaard	Research Library Assistant
Elizabeth Patterson	Assistant Office Manager
Della B. Schick	Receptionist
Joanne Buck	Information Processing Specialist
Becky Cudworth	Proofreader
Melissa Lewis	Proofreader
Andrea Cooper	Information Processing Specialist
Amy LaVallie	Information Processing Specialist

#### LEGISLATIVE COUNCIL SESSION EMPLOYEES

Chris Colby	Proofreader
Eric E. Nelson	Legislative Tour Coordinator
Eileen Schnaidt	Proofreader
Cheryl Senechal	Proofreader
Darlene Vander Vorst	Proofreader
Trish Whalen	Messenger

#### LEGISLATIVE INTERNS

Levi Andrist	Senate Judiciary
	Senate Natural Resources
Rachel Bruner	Senate Industry, Business and Labor
	Senate Agriculture
Dane Connor	Senate Human Services
	Senate Political Subdivisions
Jana Connor	Senate Finance and Taxation
	Senate Transportation
Pam Crawford	House Education
	House Natural Resources
Jonathan Godfread	House Finance and Taxation
	House Transportation
Stefanie Haarsager	Senate Education
	Senate Government and Veterans Affairs
Shannon Johnson	House Judiciary
	House Political Subdivisions

Tyler Morrow	House Industry, Business and Labor House Agriculture
Jason Nisbet	House Human Services House Government and Veterans Affairs

#### HOUSE OF REPRESENTATIVES

Susan Axwig	Journal Reporter
Shirley Branning	Assistant Appropriations Committee Clerk
Georgia Clement	Payroll Clerk
Jeanette Cook	Committee Clerk
Vicky Crabtree	Committee Clerk
Jay Doan	Assistant Chief Clerk
Lori Engleson	Assistant Chief Committee Clerk
Dwight Eckert	Page and Bill Book Clerk
Arlene Flanders	Page and Bill Book Clerk
Nancy Gerhardt	Committee Clerk
Jeff Greenwood	Staff Assistant to the Minority Leader
Carmen Hart	Committee Clerk
Erma Hauglie	Administrative Assistant to the Speaker
Brenda Huff	Page and Bill Book Clerk
Harry Iszler	Assistant Sergeant-at-Arms
Jessica Janusz	Page and Bill Book Clerk
Connie Johnsen	Chief Page and Bill Book Clerk
Marlys Kienzle	Chief Committee Clerk
Emily Knopik	Assistant Sergeant-at-Arms
Rita Kopp	Committee Clerk
Jennifer Kranda	Desk Page
ReMae Kuehn	Committee Clerk
Lindy Lein	Assistant Sergeant-at-Arms
Ellen LeTang	Committee Clerk
Mary Mann	Information Desk Attendant
Jerry Moszer	Sergeant-at-Arms
Erik Nygren	Staff Assistant to the Majority Leader
Dawn Penrose	Committee Clerk
Peggy Puetz	Deputy Sergeant-at-Arms
Buell Reich	Chief Clerk
Morgan Reinke	Assistant Appropriations Committee Clerk
Kathleen Rodin	Committee Clerk
Holly Sand	Appropriations Committee Clerk
Delores Shimek	Committee Clerk
Carol Siegert	Administrative Assistant to the Minority Leader
Janice Stein	Administrative Assistant to the Majority Leader
Carl Strum	Bill Clerk
Janice Thon	Calendar Clerk
Jeanne Vetter	Assistant Sergeant-at-Arms
Tonya Voegele	Assistant Appropriations Committee Clerk

#### SENATE

Kylah Aull	Journal Reporter
Wanda Baar-Hoechst	Page and Bill Book Clerk
David Baumgartner	Deputy Sergeant-at-Arms
Stephanie Bitz	Desk Page
Diane Davis	Committee Clerk
Alice Delzer	Appropriations Committee Clerk
Renae Doan	Administrative Assistant to the Majority Leader
Janice Dorrheim	Information Desk Attendant
Jan Effertz	Committee Clerk
Rita Giesen	Chief Page and Bill Book Clerk
Fran Gronberg	Secretary of the Senate
Jody Hauge	Committee Clerk
Kevin Horneman	Parking Lot Attendant
Bill Horton	Supply Room Coordinator

Krysta Hougan	Page and Bill Book Clerk
Adam Jones	Staff Assistant to the Majority Leader
Cassandra Kroh	Committee Clerk
Rose Laning	Assistant Appropriations Committee Clerk
Eva Liebelt	Committee Clerk
Frank Losos	Assistant Secretary of the Senate
Katrina Mickelson	Committee Clerk
Mary Monson	Committee Clerk
Katie Oliver	Committee Clerk
Matthew Perry	Staff Assistant to the Minority Leader
Jackie Pfliger	Sergeant-at-Arms
Robert Porter	Assistant Sergeant-at-Arms
Jane Schaible	Bill Clerk
Bernie Schiermeister	Assistant Sergeant-at-Arms
Troy Schuchard	Assistant Committee Clerk
Emily Sparling	Committee Clerk
Kathy Wachter	Administrative Assistant to the Minority Leader
Carie Wining	Committee Clerk
Joe Wolf	Calendar Clerk
Arlene Yantzer	Page and Bill Book Clerk
Pauline Ziegler	Chief Committee Clerk



## I. SESSION LAWS

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# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant governor; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the office of the governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,589,735	\$410,036	\$2,999,771
Operating expenses	426,787	0	426,787
Contingencies	10,000	0	10,000
Roughrider awards	10,800	0	10,800
Presidential electors	500	(500)	0
Transition in	15,000	(15,000)	0
Transition out	50,000	(50,000)	0
Prevention and advisory council	100,000	(100,000)	0
Total all funds	\$3,202,822	\$244,536	\$3,447,358
Less estimated income	100,000	(100,000)	0
Total general fund	\$3,102,822	\$344,536	\$3,447,358
Full-time equivalent positions	18.00	0.00	18.00

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the governor for transfer to other agencies or funds for programs and purposes designated by the sixty-first legislative assembly, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Fiscal stabilization - Education	\$85,644,337
Fiscal stabilization - Other government services	19,055,342
Total federal funds	\$104,699,679

The governor may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act funds are no longer available.

**SECTION 3. APPROPRIATION - AUTHORIZATION - LIMITATION - GOVERNOR'S OFFICE.** In addition to the amounts appropriated to the governor's office in section 1 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2009, and ending June 30, 2011. Any federal funds made available to the governor's office under the federal American Recovery and Reinvestment Act of 2009 may be accepted under this section but may not be spent until appropriated by the legislative assembly or approved by the emergency commission and budget section under chapter 54-16.

**SECTION 4. AMENDMENT.** Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-07-04. Salary of governor.** The annual salary of the governor is ~~ninety six one hundred five thousand one hundred eighty three and thirty-four~~ ninety six one hundred five thousand one hundred eighty three and thirty-four dollars through June 30, ~~2008~~ 2010, and one hundred ~~ten thousand thirty-one two~~ hundred eighty-five dollars thereafter.

**SECTION 5. AMENDMENT.** Section 54-08-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-08-03. Salary of lieutenant governor.** The annual salary of the lieutenant governor is ~~seventy four eighty-one thousand six five hundred sixty-eight~~ seventy four eighty-one thousand six five hundred sixty-eight ~~thirty-eight~~ thirty-eight dollars through June 30, ~~2008~~ 2010, and ~~seventy seven eighty-five~~ seventy seven eighty-five thousand six hundred ~~fifty-five~~ fifteen dollars thereafter.

**SECTION 6. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 2

### HOUSE BILL NO. 1002

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; to provide for a transfer; to provide legislative intent; to provide a contingent appropriation; to provide an exemption; and to amend and reenact sections 16.1-01-15 and 54-09-05 of the North Dakota Century Code, relating to interest earnings on the election fund and to the salary of the secretary of state.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

#### SECRETARY OF STATE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,634,493	\$495,016	\$3,129,509
Operating expenses	2,059,181	1,123,769	3,182,950
Petition review	8,000	0	8,000
Election reform	5,489,230	2,854,877	8,344,107
Bank of North Dakota loan	2,920,000	(2,920,000)	0
Total all funds	\$13,110,904	\$1,553,662	\$14,664,566
Less estimated income	8,873,865	41,113	8,914,978
Total general fund	\$4,237,039	\$1,512,549	\$5,749,588
Full-time equivalent positions	27.00	1.00	28.00

##### Subdivision 2.

#### SECRETARY OF STATE - PUBLIC PRINTING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operating expenses	\$303,500	\$33,500	\$337,000
Total general fund	\$303,500	\$33,500	\$337,000

## Subdivision 3.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$4,540,539	\$1,571,049	\$6,111,588
Grand total special funds	8,873,865	3,441,811	12,315,676
Grand total all funds	\$13,414,404	\$5,012,860	\$18,427,264

**SECTION 2. APPROPRIATION - TRANSFER.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000, which the office of management and budget shall transfer to the secretary of state election fund for imputed interest earnings allocable to the amount of nonfederal funds contained in the election fund, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LOAN AUTHORIZATION - CONTINGENT APPROPRIATION - BUDGET SECTION APPROVAL.** Subject to budget section approval, the secretary of state may borrow up to \$3,400,698 from the Bank of North Dakota, which is appropriated to the secretary of state for the purpose of implementing the North Dakota business development engine computer project, during the biennium beginning July 1, 2009, and ending June 30, 2011. The secretary of state may request budget section approval only if the revenues projected by the secretary of state and the office of management and budget to be generated as a result of provisions of chapter 102 of the 2007 Session Laws over the term of the proposed loan based on the trend of actual corporate charters granted are anticipated to be sufficient to repay the proposed loan, including interest over the term of the loan.

**SECTION 4. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation of section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Mainframe migration computer project	\$824,153	\$780,000
Transfer to election fund	0	25,000
Total general fund	\$824,153	\$805,000

The 2009-11 one-time funding amounts are not part of the entity's base budget for the 2011-13 biennium. The secretary of state shall report to the appropriations committees of the sixty-second legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. EXEMPTION - GENERAL SERVICES OPERATING FUND.** Any unexpended and unobligated balance remaining in the secretary of state's general services operating fund on June 30, 2009, is not subject to the provisions of section 54-09-08, and any unexpended funds are available and may be expended by the secretary of state, during the biennium beginning July 1, 2009, and ending June 30, 2011, for the database and processing platform migration project.

**SECTION 6. AMENDMENT.** Section 16.1-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-15. Secretary of state to establish and maintain an election fund.** The secretary of state shall establish and maintain a fund, known as the election fund, in the state treasury for the purpose of depositing payments and grants made to

the state under the provisions of sections 101, 101(c), and 906, and title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301, 42 U.S.C. 15545, 42 U.S.C. 15481-15502], and funds appropriated by the state. The moneys in the election fund and any interest earnings on the election fund must be used for the exclusive purpose of carrying out activities of the Help America Vote Act of 2002 and are subject to chapter 54-16.

**SECTION 7. AMENDMENT.** Section 54-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-05. Salary of secretary of state.** The annual salary of the secretary of state is ~~seventy-six~~ eighty-three thousand five hundred ~~eleven~~ fifty dollars through June 30, ~~2008~~ 2010, and ~~seventy-nine~~ eighty-seven thousand ~~five~~ seven hundred ~~seventy-one~~ twenty-eight dollars thereafter.

Approved May 4, 2009  
Filed May 5, 2009

## CHAPTER 3

### HOUSE BILL NO. 1003

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to amend and reenact subsection 1 of section 53-12.1-04 and section 54-12-11 of the North Dakota Century Code, relating to the lottery commission and the salary of the attorney general; to provide for a legislative council study; to provide legislative intent; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,427,935	\$3,351,102	\$25,779,037
Operating expenses	10,596,526	3,513,279	14,109,805
Capital assets	1,126,891	1,264,296	2,391,187
Grants	4,197,000	(744,775)	3,452,225
Litigation fees	50,000	0	50,000
Medical examinations	500,000	(250,000)	250,000
North Dakota lottery	3,930,589	(346,201)	3,584,388
Arrest and return of fugitives	10,000	0	10,000
Gaming commission	6,141	0	6,141
Computerized registrations	1,046,080	(1,046,080)	0
Total all funds	\$43,891,162	\$5,741,621	\$49,632,783
Less estimated income	<u>20,901,921</u>	<u>1,167,232</u>	<u>22,069,153</u>
Total general fund	\$22,989,241	\$4,574,389	\$27,563,630
Full-time equivalent positions	188.50	4.00	192.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Crime lab construction	\$1,442,840	\$0
Total general fund	\$1,442,840	\$0

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The attorney general shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND - LOCAL GAMING ENFORCEMENT GRANTS.** The grants line item in section 1 of this Act includes \$510,000 for local gaming enforcement grants.

**SECTION 4. FIRE AND TORNADO FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. Fees under this section may be collected in amounts of up to a total of \$310,000 for the biennium beginning July 1, 2009, and ending June 30, 2011. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 5. PETROLEUM RELEASE COMPENSATION FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of \$35,000 for the biennium beginning July 1, 2009, and ending June 30, 2011. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 6. ADDITIONAL FEDERAL FUNDS - EMERGENCY COMMISSION APPROVAL - LIMIT ON GENERAL FUND EXPENDITURES.** If the attorney general receives federal funding in excess of federal funding amounts appropriated for the 2009-11 biennium, the attorney general may spend the additional federal funds, subject to emergency commission approval, but may not spend funding appropriated from the general fund or the multijurisdictional task force grant fund for similar purposes for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. LEGISLATIVE COUNCIL STUDY - FELONY PENALTIES.** During the 2009-10 interim, the legislative council shall consider studying whether penalties for felonies are suitable to the felonious behavior. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**1 SECTION 8. AMENDMENT.** Subsection 1 of section 53-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created the lottery advisory commission, which is composed of five members, three of whom are legislators selected by the chairman of the legislative council and two of whom are selected by the attorney general. The term of office is three years, expiring on June thirtieth with no more than two terms expiring in any one year. ~~No member may be appointed to more than two consecutive terms.~~ Each member must be a citizen of the United States and a resident of this state. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the commission each fiscal year. A member may serve as chairman for more than one year.

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<sup>1</sup> Section 53-12.1-04 was also amended by section 97 of House Bill No. 1436, chapter 482.

**SECTION 9. AMENDMENT.** Section 54-12-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-11. Salary of attorney general.** The annual salary of the attorney general is ~~eighty-three ninety-one thousand nine seven hundred ninety-one~~ nineteen dollars through June 30, ~~2008~~ 2010, and ~~eighty-seven~~ ninety-six thousand three hundred ~~fifty-one~~ four dollars through December 31, 2010, one hundred thirteen thousand two hundred sixty-six dollars through June 30, 2011, and one hundred thirty thousand two hundred twenty-eight dollars thereafter.

**SECTION 10. LEGISLATIVE INTENT - LEGAL SERVICE STAFF TRAVEL.** It is the intent of the sixty-first legislative assembly that the office of the attorney general continue the practice of state agencies paying directly for requested legal service staff travel.

**SECTION 11. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the attorney general, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Edward Byrne memorial justice assistance grant program funding	\$1,652,426
Internet crimes against children grant program funding	216,174
Rural Law Enforcement Assistance Act funding	390,588
Total federal funds	\$2,259,188
Full-time equivalent positions	8.00

The attorney general may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

The attorney general may accept federal fiscal stimulus funding for programs that continue into the biennium beginning July 1, 2011, and ending June 30, 2013. Any federal fiscal stimulus funding received in the 2011-13 biennium is not a part of the agency's 2013-15 base budget.

**SECTION 12. FEDERAL FISCAL STIMULUS FUNDS - COMMUNITY ORIENTED POLICING SERVICES GRANTS - APPROVAL.** The attorney general shall seek emergency commission and budget section approval under chapter 54-16 for authority to accept and spend federal funds received under the federal American Recovery and Reinvestment Act of 2009 for the community oriented policing services grant program, for the period beginning with the effective date of this Act and ending June 30, 2011. The attorney general may seek authority to hire up to two additional full-time equivalent positions with funding authorized under this section.

**SECTION 13. ATTORNEY GENERAL REFUND FUND TRANSFER TO THE GENERAL FUND - EXCEPTION.** Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2009.

**SECTION 14. EMERGENCY.** Sections 11, 12, and 13 of this Act are declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 4

### HOUSE BILL NO. 1004

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state auditor; to provide legislative intent; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,321,241	\$593,805	\$7,915,046
Operating expenses	810,549	(564)	809,985
Capital assets	10,000	90,000	100,000
Information technology consultants	100,000	50,000	150,000
Total all funds	<u>\$8,241,790</u>	<u>\$733,241</u>	<u>\$8,975,031</u>
Less estimated income	<u>2,585,774</u>	<u>(272,972)</u>	<u>2,312,802</u>
Total general fund	\$5,656,016	\$1,006,213	\$6,662,229
Full-time equivalent positions	54.80	(3.00)	51.80

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Electronic working papers	\$0	\$150,000
Total general fund	\$0	\$150,000

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The state auditor shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. AMENDMENT.** Section 54-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-10. Salary of state auditor.** The annual salary of the state auditor is ~~seventy-six eighty-three thousand five hundred eleven fifty~~ dollars through June 30, ~~2008~~ 2010, and ~~seventy-nine eighty-seven thousand five seven~~ hundred ~~seventy-one twenty-eight~~ dollars thereafter.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 5

### HOUSE BILL NO. 1005

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury not otherwise appropriated, and from special funds derived from federal funds and other income, to the state treasurer for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$825,455	\$121,052	\$946,507
Operating expenses	134,787	(3,309)	131,478
In lieu of tax payments	<u>1,365,000</u>	<u>(214,000)</u>	<u>1,151,000</u>
Total general fund	\$2,325,242	(\$96,257)	\$2,228,985
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Rewrite tax distribution programs	\$768,228	\$0
Total general fund	\$768,228	\$0

**SECTION 3. AMENDMENT.** Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-11-13. Salary of state treasurer.** The annual salary of the state treasurer is ~~seventy-two~~ seventy-eight thousand ~~two~~ nine hundred ~~fifty-three~~ forty-three dollars through June 30, ~~2008~~ 2010, and ~~seventy-five~~ eighty-two thousand ~~one~~ eight hundred ~~forty-three~~ forty-five dollars thereafter.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - ELECTED OFFICIALS' SALARIES.** During the 2009-10 interim, the legislative council shall consider studying the salaries of state elected officials. The study must include a comparison of salaries, the number of full-time equivalent and temporary employees supervised by the elected official, and the complexity of each elected official's responsibilities. The study must also include a comparison to similar positions in other states. The legislative council shall report its findings and recommendations, together with any

legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 4, 2009

Filed May 5, 2009

## CHAPTER 6

### HOUSE BILL NO. 1006

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner and for payment of state reimbursement under the homestead tax credit; to provide for a transfer; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the tax commissioner's salary; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide legislative intent; and to provide for a report to the legislative assembly.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state tax commissioner for the purpose of defraying the expenses of the state tax commissioner and paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$14,728,637	\$2,181,888	\$16,910,525
Operating expenses	6,030,814	2,049,000	8,079,814
Capital assets	18,000	40,000	58,000
Homestead tax credit	8,104,000	(2,140,000)	5,964,000
Property tax relief administration	1,100,000	(1,100,000)	0
Integrated tax system repayment	0	10,230,247	10,230,247
Total all funds	<u>\$29,981,451</u>	<u>\$11,261,135</u>	<u>\$41,242,586</u>
Less special funds	<u>2,800,000</u>	<u>(2,604,000)</u>	<u>196,000</u>
Total general fund	\$27,181,451	\$13,865,135	\$41,046,586
Full-time equivalent positions	133.00	0.00	133.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Integrated tax system loan payment	\$5,356,702	\$10,230,247
On-site support-GenTax	0	1,234,000
Oil and gas integration to GenTax	0	1,500,000
Total all funds	\$5,356,702	\$12,964,247
Total special funds	0	100,000
Total general fund	\$5,356,702	\$12,864,247

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The tax commissioner shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. TRANSFER.** There is transferred to the general fund in the state treasury, out of motor vehicle fuel tax revenue, collected pursuant to section 57-43.1-02, the sum of \$1,288,000 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes.

**SECTION 4. LEGISLATIVE INTENT - INDIVIDUAL INCOME TAX SIMPLIFICATION.** It is the intent of the sixty-first legislative assembly, as it considers proposals to offer individual income tax relief through tax rate reductions, that it work toward restoring the simplicity originally intended for tax form ND-1 by eliminating or reducing the number of tax deductions and credits in a way that minimizes any negative impact for those individuals who currently claim those tax deductions and credits.

**SECTION 5. EXEMPTION.** The amount appropriated for the integrated tax system, as contained in section 1 of this Act, is not subject to the provisions of section 54-44.1-11 and the funds are available for continued work on the integrated tax system during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. AMENDMENT.** Section 57-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-01-04. Salary.** The annual salary of the state tax commissioner is ~~eighty-three~~ eighty-three ~~ninety~~ ninety thousand ~~thirty-nine~~ thirty-nine six hundred ~~seventy-eight~~ seventy-eight dollars through June 30, ~~2008~~ 2010, and ~~eighty-six~~ eighty-six ~~ninety-five~~ ninety-five thousand ~~three~~ three ~~two~~ two hundred ~~sixty~~ sixty ~~twelve~~ twelve dollars thereafter.

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 7

### HOUSE BILL NO. 1007

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the labor commissioner.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the labor commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,241,361	\$270,643	\$1,512,004
Operating expenses	309,230	(6,900)	302,330
Total all funds	\$1,550,591	\$263,743	\$1,814,334
Less estimated income	401,341	11,410	412,751
Total general fund	\$1,149,250	\$252,333	\$1,401,583
Full-time equivalent positions	11.00	1.00	12.00

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 8

### HOUSE BILL NO. 1008

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to provide legislative intent; to provide for a report to the budget section; to provide an exemption; and to amend and reenact section 49-01-05 of the North Dakota Century Code, relating to the salary of public service commissioners.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the public service commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,674,928	\$1,073,033	\$6,747,961
Operating expenses	1,635,856	309,090	1,944,946
Capital assets	68,500	59,000	127,500
Grants	8,000	2,000	10,000
Abandoned mined lands contractual services	4,500,000	2,000,000	6,500,000
Rail rate complaint case	900,000	0	900,000
Total all funds	\$12,787,284	\$3,443,123	\$16,230,407
Less estimated income	8,003,309	2,623,933	10,627,242
Total general fund	\$4,783,975	\$819,190	\$5,603,165
Full-time equivalent positions	41.00	2.00	43.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Videoconferencing equipment	\$20,000	\$0
Weights and measures equipment	39,000	0
High-flow dispenser prover	30,484	0
Total general fund	\$89,484	\$0

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The public service commission shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LEGISLATIVE INTENT - METROLOGY PROGRAM - BUDGET SECTION REPORT.** It is the intent of the sixty-first legislative assembly that the public service commission discontinue providing metrology program services during the biennium beginning July 1, 2009, and ending June 30, 2011. It is further the intent of the legislative assembly that the public service commission and the department of commerce collaborate to assist with the transition of metrology services from a public to a private service by contracting with the private sector for services on a short-term basis, assisting with equipment acquisition, and providing referrals. The public service commission shall report to the budget section during the 2009-10 interim on the status of the metrology program.

**SECTION 4. EXEMPTION.** If the public service commission transitions metrology services from a public to a private service, the public service commission may sell or transfer property related to the metrology services in a manner that is determined by the commission to be of the greatest advantage to the state. The sale or transfer of the metrology equipment is not subject to the provisions of North Dakota Century Code section 54-44-04.6.

**SECTION 5. AMENDMENT.** Section 49-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-05. Salary of commissioners.** The annual salary of a commissioner is ~~seventy-eight thousand eight hundred thirty~~ eighty-five thousand five hundred ninety-nine dollars through June 30, ~~2008~~ 2010, and ~~eighty-one thousand seven hundred forty-three~~ eighty-one thousand seven hundred twenty-two dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 9

### HOUSE BILL NO. 1009

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide for a livestock health permit inspection program; to amend and reenact sections 4-01-19 and 4-01-21 and subdivision d of subsection 1 of section 19-18-04 of the North Dakota Century Code, relating to marketing program revenue, the salary of the agriculture commissioner, and pesticide registration fees; to provide for a legislative council study; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,984,840	\$1,581,356	\$8,566,196
Operating expenses	4,714,383	1,380,220	6,094,603
Capital assets	5,000	0	5,000
Grants	1,849,225	1,120,600	2,969,825
Board of animal health	2,299,702	263,623	2,563,325
Wildlife services	1,209,000	(141,600)	1,067,400
Crop harmonization board	<u>25,000</u>	<u>25,000</u>	<u>50,000</u>
Total all funds	\$17,087,150	\$4,229,199	\$21,316,349
Less estimated income	<u>11,388,326</u>	<u>2,706,140</u>	<u>14,094,466</u>
Total general fund	<u>\$5,698,824</u>	<u>\$1,523,059</u>	<u>\$7,221,883</u>
Full-time equivalent positions	67.50	7.00	74.50

**SECTION 2. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$3,888,578, or so much of the sum as may be available, from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. ANHYDROUS AMMONIA STORAGE INSPECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$40,000, or so much of the sum as may be available, from the anhydrous ammonia storage inspection fund for the purpose of defraying the expenses of regulating anhydrous ammonia storage facilities, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line item in section 1 of this Act includes the sum of \$968,800, or

so much of the sum as may be necessary, from the game and fish department operating fund for the purpose of defraying the expenses of various agriculture department programs for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Animal tracking database	\$90,836	\$0
Total general fund	\$90,836	\$0

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. LEGISLATIVE COUNCIL STUDY - WILDLIFE SERVICES.** During the 2009-10 interim, the legislative council shall consider studying the cooperative agreement between the agriculture commissioner and the United States department of agriculture wildlife services program. The study, if conducted, must include a review of current program funding sources and a review of wildlife damage control programs in other states, including South Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 7. LIVESTOCK HEALTH PERMIT INSPECTION PROGRAM.** The state board of animal health shall increase the number of health permit inspections on livestock entering the state for the biennium beginning July 1, 2009, and ending June 30, 2011. As part of the program, the board shall provide public information on the results of the livestock health permit inspections.

**SECTION 8. OFFICE SPACE LEASE FUNDING - BUDGET SECTION APPROVAL.** The operating expenses line item in section 1 of this Act includes the sum of \$120,000 from the general fund which the agriculture commissioner may use to lease additional office space for department purposes, subject to budget section approval.

**SECTION 9. PROJECT SAFE SEND - 2009 FLOOD PESTICIDE CLEANUP.** The operating expenses line item in section 1 of this Act includes the sum of \$40,000 from the environment and rangeland protection fund which the agriculture commissioner shall use for the collection of damaged pesticides resulting from 2009 flooding under the project safe send program for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 10. AMENDMENT.** Section 4-01-19 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-19. Marketing bureau.** The agriculture commissioner shall establish and maintain a marketing bureau for the purpose of gathering and disseminating statistical information on agricultural marketing problems of the state and engaging in marketing services of agricultural products. Any moneys received or generated by

the pride of Dakota program must be deposited in the ~~general~~ agriculture department operating fund in the state treasury.

**SECTION 11. AMENDMENT.** Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-21. Salary of agriculture commissioner.** The annual salary of the agriculture commissioner is ~~seventy-eight~~ eighty-five thousand ~~five~~ eight hundred ~~ninety-nine~~ thirty dollars through June 30, ~~2008~~ 2010, and ~~eighty-one~~ ninety thousand ~~seven~~ one hundred ~~forty-three~~ twenty-two dollars thereafter.

**SECTION 12. AMENDMENT.** Subdivision d of subsection 1 of section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit ~~fifty dollars for each registered product to the general fund in the state treasury and the remainder~~ of the registration fee for each registered product to the environment and rangeland protection fund.

**SECTION 13. FULL-TIME EQUIVALENT POSITION - EMERGENCY COMMISSION APPROVAL.** The agriculture commissioner may request from the emergency commission an additional full-time equivalent position for the state meat inspection program if demand for the program increases sufficient to require the position for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 14. EMERGENCY.** The sum of \$40,000 for project safe send included in the operating expenses line item in section 1 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 10

### HOUSE BILL NO. 1010

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to provide for fund transfers; to provide for making payments of insurance premiums tax collections to fire departments; to create and enact a new subsection to section 26.1-36-23 of the North Dakota Century Code, relating to the continuation of group hospital, surgical, and medical coverage after termination of employment; to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the commissioner's salary; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,786,747	\$548,923	\$6,335,670
Operating expenses	2,178,377	(115,113)	2,063,264
Capital assets	0	170,000	170,000
Grants	6,490,000	500,000	6,990,000
Total special funds	\$14,455,124	\$1,103,810	\$15,558,934
Full-time equivalent positions	46.50	(1.00)	45.50

**SECTION 2. APPROPRIATION - TRANSFER - STATE BONDING FUND.** There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$500,000, which the office of management and budget shall transfer to the state bonding fund, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 3. INSURANCE PREMIUM TAX DISTRIBUTION FUND PAYMENTS - USES.** Section 1 of this Act includes \$6,820,000 from the insurance premium tax distribution fund, of which \$6,200,000 is for the purpose of making payments to fire departments and \$620,000 is for the purpose of making two equal payments to the North Dakota firefighter's association, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. BONDING FUND.** Section 1 of this Act includes \$41,518 from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. FIRE AND TORNADO FUND.** Section 1 of this Act includes \$1,624,159 from the state fire and tornado fund, including \$170,000 for a grant to the North Dakota firefighter's association and \$1,454,159 to pay fire and tornado fund

administrative expenses, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. UNSATISFIED JUDGMENT FUND.** Section 1 of this Act includes \$24,087 from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. PETROLEUM TANK RELEASE COMPENSATION FUND.** Section 1 of this Act includes \$96,238 from the petroleum tank release compensation fund to pay petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. ANHYDROUS AMMONIA STORAGE FACILITY INSPECTION FUND.** Section 1 of this Act includes \$150,000 from the anhydrous ammonia storage facility inspection fund to pay for anhydrous ammonia tank inspection costs for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. AMENDMENT.** Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-09. Salary of commissioner.** The annual salary of the commissioner is ~~seventy six~~ seventy-six ~~eighty-three~~ eighty-three thousand five hundred ~~eleven~~ eleven ~~fifty~~ fifty dollars through June 30, ~~2008~~ 2010, and ~~seventy nine~~ seventy-nine ~~eighty-seven~~ eighty-seven thousand ~~five~~ seven hundred ~~seventy-one~~ seventy-one ~~twenty-eight~~ twenty-eight dollars thereafter.

**SECTION 10.** A new subsection to section 26.1-36-23 of the North Dakota Century Code is created and enacted as follows:

- a. Notwithstanding any other provision of this section, an employee or member who does not have an election of continuation coverage as described in this section in effect on the effective date of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5], but who would be an assistance-eligible individual under title III of division B of the Act if the election were in effect, may elect continuation coverage. The employer or the group policyholder shall provide employees or members with additional written notice of the right to elect coverage under this subsection within sixty days of the date of enactment of the American Recovery and Reinvestment Act of 2009 or within fourteen days of the effective date of this Act, whichever is later. The employee or member may make the election in writing no later than sixty days after the date the employer or the group policyholder provides the notice to the employee or member.
- b. Continuation coverage elected under this subsection commences with the first period of coverage beginning after February 16, 2009, and may not extend beyond the period of continuation coverage that would have been required if the coverage had instead been elected under subsection 4.
- c. The period beginning on the date that the employee or member was involuntarily terminated and ending when the continuation coverage starts must be disregarded for the purpose of determining whether a preexisting condition exclusion period applies.

- d. An employee or member electing continuation under this subsection shall pay to the group policyholder or the employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, but not more than the group rate for the insurance being continued under the group policy on the due date of each payment. The employee's or member's written election of continuation, together with the contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer within thirty-one days of the date the employee's or member's election of continuation coverage.
- e. Continuation of insurance under this subsection terminates at the earlier of the date when the person fails to satisfy subsection 2 or when the person fails to satisfy any requirement of subsection 6.
- f. The notification described in subsection 7 is not required for continuation coverage elected under this subsection.
- g. Except as otherwise provided in this subsection, the provisions of this section apply to an employee or member electing continuation coverage.

**SECTION 11. EMERGENCY.** Sections 2 and 10 of this Act are declared to be an emergency measure.

Approved May 4, 2009

Filed May 5, 2009

**CHAPTER 11**

**HOUSE BILL NO. 1011**

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the securities commissioner; and to provide for a legislative council study.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the securities commissioner of the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,265,243	\$133,877	\$1,399,120
Operating expenses	558,435	148,006	706,441
Total all funds	\$1,823,678	\$281,883	\$2,105,561
Less estimated income	<u>217,199</u>	<u>100,000</u>	<u>317,199</u>
Total general fund	\$1,606,479	\$181,883	\$1,788,362
Full-time equivalent positions	9.00	0.00	9.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Document storage and retrieval system	<u>\$16,876</u>	<u>\$0</u>
Total general fund	\$16,876	\$0

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The securities commission shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - SECURITIES COMMISSIONER FEES.** During the 2009-10 interim, the legislative council shall consider studying the structure and appropriateness of the level of fees charged by the securities commissioner. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 1, 2009  
Filed May 4, 2009

## CHAPTER 12

### HOUSE BILL NO. 1012

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide a contingent appropriation; to provide for legislative council studies; to provide statements of legislative intent; to create and enact a new subsection to section 50-25.1-05 of the North Dakota Century Code, relating to the adoption of rules regarding the recording of interviews in child abuse or neglect cases; to amend and reenact sections 25-04-05, 50-24.1-02.6, 50-24.5-04, 50-29-04, and 50-30-02 of the North Dakota Century Code, relating to developmental center admission screenings, the personal needs allowance for individuals in basic care facilities, eligibility under the state children's health insurance program, and use of the health care trust fund; to repeal section 4 of chapter 422 of the 2007 Session Laws, relating to the effective date of the expansion of medical assistance benefits; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

#### MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,512,358	\$2,520,060	\$14,032,418
Operating expenses	60,110,356	(13,567,566)	46,542,790
Capital assets	285	(285)	0
Total all funds	\$71,622,999	(\$11,047,791)	\$60,575,208
Less estimated income	50,663,834	(16,290,983)	34,372,851
Total general fund	\$20,959,165	\$5,243,192	\$26,202,357

##### Subdivision 2.

#### PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$25,411,041	\$16,090,648	\$41,501,689
Operating expenses	67,811,802	4,966,224	72,778,026
Capital assets	399	12,601	13,000
Grants	344,019,216	111,831,588	455,850,804
Grants - Medical assistance	1,117,187,821	171,985,015	1,289,172,836
State administrative child support	12,488,292	(12,488,292)	0
Total all funds	\$1,566,918,571	\$292,397,784	\$1,859,316,355

Less estimated income	<u>1,126,663,567</u>	<u>250,532,515</u>	<u>1,377,196,082</u>
Total general fund	<u>\$440,255,004</u>	<u>\$41,865,269</u>	<u>\$482,120,273</u>

## Subdivision 3.

## HUMAN SERVICE CENTERS AND INSTITUTIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northwest human service center	\$7,493,897	\$958,104	\$8,452,001
North central human service center	16,782,604	2,425,414	19,208,018
Lake region human service center	9,817,355	1,080,022	10,897,377
Northeast human service center	22,107,349	3,661,082	25,768,431
Southeast human service center	26,061,630	4,086,258	30,147,888
South central human service center	14,683,811	883,684	15,567,495
West central human service center	20,687,272	4,003,786	24,691,058
Badlands human service center	9,798,789	1,058,549	10,857,338
State hospital	57,391,944	11,226,902	68,618,846
Developmental center	<u>46,793,933</u>	<u>7,019,985</u>	<u>53,813,918</u>
Total all funds	<u>\$231,618,584</u>	<u>\$36,403,786</u>	<u>\$268,022,370</u>
Less estimated income	<u>112,757,229</u>	<u>15,503,656</u>	<u>128,260,885</u>
Total general fund	<u>\$118,861,355</u>	<u>\$20,900,130</u>	<u>\$139,761,485</u>

## Subdivision 4.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$580,075,524	\$68,008,591	\$648,084,115
Grand total special funds	<u>1,290,084,630</u>	<u>342,634,393</u>	<u>1,632,719,023</u>
Grand total all funds	<u>\$1,870,160,154</u>	<u>\$410,642,984</u>	<u>\$2,280,803,138</u>
Full-time equivalent positions	2223.38	(6.50)	2216.88

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the department of human services, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Federal medical assistance percentage	\$66,500,000
Elderly nutrition services	485,000
Child support incentive matching funds	3,200,000
Rehabilitation services and disability assistance and independent living	2,043,000
Individuals With Disabilities Education Act - Part C	2,140,000
Supplemental nutrition assistance program benefits and administration	9,874,747
Senior employment program	143,288

Older blind	<u>3,170</u>
Total federal funds	\$84,389,205

The department of human services may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section, except for the funding of \$66,500,000 relating to the federal medical assistance percentage and funding of \$2,763,082 of child support incentive matching funds, are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. GENERAL FUND TRANSFER TO BUDGET STABILIZATION FUND - EXCEPTION - USE OF GENERAL FUND AMOUNTS.** Notwithstanding section 54-27.2-02, the state treasurer and the office of management and budget may not include in the amount used to determine general fund transfers to the budget stabilization fund at the end of the 2007-09 biennium under chapter 54-27.2 any general fund amounts resulting from the increased federal share of medical assistance payments resulting from federal medical assistance percentage changes under the federal American Recovery and Reinvestment Act of 2009. The state treasurer and the office of management and budget shall separately account for these amounts and 2009-11 biennium general fund amounts resulting from federal medical assistance percentage changes under the federal American Recovery and Reinvestment Act of 2009 and use these amounts to defray the expenses of continuing program costs of the department of human services from the general fund, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Inflationary increases for human service providers	\$27,345,292
Rate increases for selected medicaid services due to rebasing	21,788,982
Rate increases for nursing homes due to property limit changes and other nursing home increases	7,788,572
Wage increases for employees of nursing homes, basic care, and developmental disabilities services providers and qualified service providers	16,229,317
Salary increases for department of human services employees	<u>14,293,872</u>
Total	\$87,446,035

**SECTION 4. BANK OF NORTH DAKOTA LOAN AUTHORIZATION - BUDGET SECTION APPROVAL - CONTINGENT APPROPRIATION.** If the caseload/utilization of medical services, long-term care, and developmental disabilities services is more than anticipated by the sixty-first legislative assembly, the department of human services, subject to budget section approval, may borrow the sum of \$8,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing the state matching share of additional medical assistance grants for medical services, long-term care, and developmental disabilities services, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of human services shall request funding from the sixty-second legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest.

**SECTION 5. 2009-11 SPENDING LEVEL - AUTHORIZATION.** If department of human services expenditures exceed funding levels, including loan

proceeds appropriated in section 4 of this Act, approved by the sixty-first legislative assembly during the 2009-11 biennium due to caseload/utilization of programs exceeding the level anticipated by the legislative assembly, the department may continue to spend at the increased level and may seek a deficiency appropriation from the sixty-second legislative assembly.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Medicaid management information system project (MMIS)	\$3,643,133	\$0
State hospital - Sex offender treatment addition project	3,100,000	0
State hospital - Capital improvements	3,062,757	0
State hospital - Extraordinary repairs	1,153,500	0
Developmental center - Capital improvements	300,000	0
Developmental center - Extraordinary repairs	547,092	0
Developmental center - Equipment	80,782	0
Supplemental payment	0	400,000
Extraordinary repairs	0	3,443,692
Equipment over \$5,000	0	352,606
Total general fund	\$11,887,264	\$4,196,298

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The department of human services shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.**

Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 1 of this Act and between subdivisions within section 1 of this Act for the biennium beginning July 1, 2009, and ending June 30, 2011. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2010, any transfers made in excess of \$50,000 and to the appropriations committees of the sixty-second legislative assembly regarding any transfers made pursuant to this section.

**SECTION 8. ESTIMATED INCOME - LIMIT - HEALTH CARE TRUST FUND.** The estimated income line item in subdivision 2 of section 1 of this Act includes \$4,124,506 from the health care trust fund for nursing facilities. The department of human services expenditures from this fund may not exceed this amount for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. LEGISLATIVE COUNCIL STUDY - CHILD SUPPORT ENFORCEMENT.** During the 2009-10 interim, the legislative council shall consider studying the department of human services' child support enforcement program. The study should include the review of arrearages in terms of total owed and interest accrued and child support enforcement activities in other states. The legislative council shall report its findings and recommendations, together with any legislation

required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 10. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE.**

During the 2009-10 interim, the legislative council shall study long-term care services in the state. The study must include a review of the department of human services' payment system and a review of the state department of health's survey and inspection programs and processes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 11. SUPPLEMENTAL PAYMENTS - BASIC CARE AND NURSING HOME FACILITY SALARY AND BENEFIT INCREASES.**

The funding appropriated in subdivision 2 of section 1 of this Act includes \$17,977,513, of which \$5,512,441 is from the general fund, \$800,000 is from the health care trust fund, and \$11,665,072 is from federal funds, for providing supplemental payments to basic care and skilled nursing care facilities to allow for a salary and benefit increase for employees beginning July 1, 2009. Basic care and skilled nursing care facilities may not use the money received under this section for providing salary and benefit enhancements to administrators or directors of nursing.

**SECTION 12. SUPPLEMENTAL PAYMENTS - DEVELOPMENTAL DISABILITIES PROVIDER SALARY AND BENEFIT INCREASES.**

The funding appropriated in subdivision 2 of section 1 of this Act includes \$21,639,106, of which \$7,086,807 is from the general fund and \$14,552,299 is from federal funds, for providing supplemental payments to developmental disabilities providers to allow for a salary and benefit increase for employees beginning July 1, 2009. Developmental disabilities service providers may not use the money received under this section for providing salary and benefit enhancements to administrators.

**SECTION 13. LEGISLATIVE INTENT - MEDICAID PROVIDER PAYMENTS.**

It is the intent of the legislative assembly that the department of human services establish a goal to set medicaid payments for hospitals, physicians, chiropractors, and ambulances at 100 percent of cost.

**SECTION 14. SUPPLEMENTAL PAYMENT - CRITICAL ACCESS HOSPITALS.**

The grants - medical assistance line item in subdivision 2 of section 1 of this Act includes the sum of \$400,000 of one-time funding from the general fund that the department of human services shall use for providing a supplemental payment to eligible critical access hospitals. A critical access hospital is eligible for a payment under this section only if its percentage of medical payments exceeds 25 percent of its total annual revenue in its most recent audited financial statements and is located in a city with a population that does not exceed 1,450. The department shall seek federal medicaid funding to provide a portion of the \$400,000 supplemental payment. If federal medicaid funding is not available for a portion of the payment, the department may spend the \$400,000 from the general fund for making the supplemental payment only if the action will not result in a reduction in federal medicaid funding to the state.

**SECTION 15. LEGISLATIVE INTENT - DEMENTIA CARE SERVICES.**

It is the intent of the sixty-first legislative assembly that the department of human services integrate the dementia care services program established in House Bill No. 1043, as approved by the sixty-first legislative assembly, with the home and community-based care services programs of the department.

**SECTION 16. LEGISLATIVE COUNCIL STUDY - TRAUMATIC BRAIN INJURY.** During the 2009-11 interim, the legislative council shall consider studying the impact of individuals with traumatic brain injury, including veterans who are returning from wars, on the state's human services system. The study must include an analysis of the estimated cost of providing human service-related services to the individuals with traumatic brain injury. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 17. LEGISLATIVE INTENT - CHILDREN'S HEALTH INSURANCE PROGRAM OUTREACH.** It is the intent of the sixty-first legislative assembly that the department of human services award a contract for outreach services for the state children's health insurance program to an entity other than an insurance company, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 18. UNSPENT 2007-09 BIENNIUM GENERAL FUND APPROPRIATIONS - EXCEPTION.** The amount of \$270,000 of the \$3,100,000 for a sexual offender treatment addition at the state hospital appropriated in subdivision 3 of section 3 of 2007 Senate Bill No. 2012 is not subject to section 54-44.1-11 and may be spent during the 2009-11 biennium for completing roof repairs at the state hospital.

**SECTION 19. AMENDMENT.** Section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-05. Qualifications for admission to state facility - ~~Temporary~~ Screening required prior to admission or readmission - Educational or related services without charge for persons twenty-one years of age and under.**

1. The superintendent may admit a person to the developmental center at westwood park, Grafton when all of the following conditions have been met:
  - a. Application for admission has been made on behalf of the person by a parent or guardian or the person or agency having legal custody, or by the person seeking admission, in accordance with procedures established by the department of human services.
  - b. A comprehensive evaluation of the person has been made within three months of the date of application, a report of which has been filed with the superintendent and which, together with such other information or reviews as the department of human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission to the developmental center at westwood park, Grafton.
  - c. The person may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted by the department of human services.
2. ~~The superintendent~~ No person may admit be admitted or readmitted to the developmental center at westwood park, Grafton, temporarily for the purposes of observation, without commitment, unless that person has undergone a screening process at the developmental center to determine whether the admission or readmission is appropriate. Length

of stay criteria may be established under rules as the department of human services may adopt; ~~any~~. Any person who is suspected of being able to benefit from the services offered at the center, ~~may be screened~~ to ascertain whether or not that person is actually a proper case for care, treatment, and training ~~in at the state facility developmental center~~. If in the opinion of the superintendent the person ~~temporarily admitted to the developmental center at westwood park, Grafton~~ ~~screened under this subsection~~ is a proper subject for institutional care, treatment, and training at the ~~developmental~~ center, that person may remain as a voluntary resident at ~~such~~ the center at the discretion of the superintendent if all other conditions for admission required by this section are met.

3. Notwithstanding any other provision of this chapter, no handicapped patient, twenty-one years of age or under, or the estate or the parent of such patient, may be charged for educational or related services provided at the developmental center at westwood park, Grafton. Except as provided in subsection 4, the department of human services has prior claim on all benefits accruing to such patients for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workforce safety and insurance, or medical care and disability programs. For purposes of this subsection, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services other than medical and medically related services must be paid by the developmental center at westwood park, Grafton, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department of human services, the school district of residence, and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each agency and political subdivision is liable. The department of public instruction may adopt rules necessary to implement this section.
4. Parents of a handicapped patient, twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of nonhandicapped children. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:
  - a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
  - b. An increase in premiums or the discontinuation of a policy.
  - c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the developmental center pays or waives the out-of-pocket expense.

**SECTION 20. AMENDMENT.** Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.6. (Contingent effective date - See note) Medical assistance benefits - Eligibility criteria:**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
  - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all minors born before September 30, 1983, equal to one hundred percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined and that do not exceed legislative appropriations for that purpose.
4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.

**(Contingent effective date - See note) Medical assistance benefits - Eligibility criteria.**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
  - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law; that provide an income level for all individuals from birth through age eighteen equal to one hundred thirty-three

percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined.

4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.

<sup>2</sup> **SECTION 21. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic care or adult family foster care facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~sixty~~ sixty-five dollars, less that person's total income.

**SECTION 22.** A new subsection to section 50-25.1-05 of the North Dakota Century Code is created and enacted as follows:

The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.

**SECTION 23. AMENDMENT.** Section 50-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-04. Plan requirements.** The plan:

1. Must be provided through private contracts with insurance carriers;
2. Must allow conversion to another health insurance policy;
3. Must be based on an actuarial equivalent of a benchmark plan;
4. Must incorporate every state-required waiver approved by the federal government;
5. Must include community-based eligibility outreach services; and
6. Must provide:
  - a. A net income eligibility limit of one hundred ~~fifty~~ sixty percent of the poverty line;
  - b. A copayment requirement for each pharmaceutical prescription and for each emergency room visit;

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<sup>2</sup> Section 50-24.5-04 was also amended by section 16 of House Bill No. 1015, chapter 15.

- c. A deductible for each inpatient hospital visit;
- d. Coverage for:
  - (1) Inpatient hospital, medical, and surgical services;
  - (2) Outpatient hospital and medical services;
  - (3) Psychiatric and substance abuse services;
  - (4) Prescription medications;
  - (5) Preventive screening services;
  - (6) Preventive dental and vision services; and
  - (7) Prenatal services; and
- e. A coverage effective date that is the first day of the month, following the date of application and determination of eligibility.

**SECTION 24. AMENDMENT.** Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.**

1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund. The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:
  - a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
  - b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
  - c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
2. The department shall continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.
3. Moneys in the fund may not be included in draft appropriation acts under section 54-44.1-06.

**SECTION 25. REPEAL.** Section 4 of chapter 422 of the 2007 Session Laws is repealed.

**SECTION 26. EMERGENCY.** Sections 2 and 18 of this Act are declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 13

### HOUSE BILL NO. 1013

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library; to provide an appropriation; to provide for the distribution of funding for gifted and talented programs and other grants; to provide a contingent appropriation; to provide for the development and implementation of a future services plan for the school for the deaf; to amend and reenact section 15.1-02-02 and subsection 6 of section 15.1-29-14 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction and special education cost reimbursements; to provide legislative intent; to provide an exemption; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds including federal fiscal stimulus funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009 and other income, to the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

#### Subdivision 1.

#### DEPARTMENT OF PUBLIC INSTRUCTION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,415,534	\$1,936,388	\$13,351,922
Operating expenses	19,738,294	11,313,692	31,051,986
Grants - State school aid	726,165,879	82,204,416	808,370,295
Grants - Special education contracts	17,500,000	(2,000,000)	15,500,000
Grants - Supplemental one-time	0	85,644,337	85,644,337
Grants - Supplemental operations	0	16,795,584	16,795,584
Grants - Transportation	33,500,000	10,000,000	43,500,000
Grants - Other grants	227,701,806	15,287,915	242,989,721
Transportation efficiency	30,000	0	30,000
National board certification	40,000	62,500	102,500
Total all funds	<u>\$1,036,091,513</u>	<u>\$221,244,832</u>	<u>\$1,257,336,345</u>
Less estimated income	<u>325,668,238</u>	<u>120,187,517</u>	<u>445,855,755</u>
Total general fund	\$710,423,275	\$101,057,315	\$811,480,590
Full-time equivalent positions	94.75	5.00	99.75

## Subdivision 2.

## STATE LIBRARY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,628,494	\$565,297	\$3,193,791
Operating expenses	1,477,772	4,801	1,482,573
Grants	1,752,500	100,000	1,852,500
Total all funds	\$5,858,766	\$670,098	\$6,528,864
Less estimated income	1,881,253	46,583	1,927,836
Total general fund	\$3,977,513	\$623,515	\$4,601,028
Full-time equivalent positions	29.75	0.00	29.75

## Subdivision 3.

## SCHOOL FOR THE DEAF

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,765,173	\$664,825	\$5,429,998
Operating expenses	1,514,283	124,320	1,638,603
Capital assets	50,000	1,849,140	1,899,140
Deferred maintenance	0	98,605	98,605
Total all funds	\$6,329,456	\$2,736,890	\$9,066,346
Less estimated income	1,039,018	1,127,432	2,166,450
Total general fund	\$5,290,438	\$1,609,458	\$6,899,896
Full-time equivalent positions	43.94	0.00	43.94

## Subdivision 4.

## VISION SERVICES - SCHOOL FOR THE BLIND

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,978,895	\$552,369	\$3,531,264
Operating expenses	640,798	39,854	680,652
Capital assets	142,100	(115,100)	27,000
Deferred maintenance	0	64,500	64,500
Total all funds	\$3,761,793	\$541,623	\$4,303,416
Less estimated income	843,857	(27,955)	815,902
Total general fund	\$2,917,936	\$569,578	\$3,487,514
Full-time equivalent positions	28.00	1.50	29.50

## Subdivision 5.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$722,609,162	\$103,859,866	\$826,469,028
Grand total special funds	\$329,432,366	\$189,058,976	\$518,491,342
Grand total all funds	\$1,052,041,528	\$292,918,842	\$1,344,960,370

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Department of public instruction		
STARS school data collection system rewrite	\$0	\$500,000
Geographic alliance endowment	0	226,000

Total department of public instruction - General fund	\$0	\$726,000
School for the deaf		
Deferred maintenance	\$100,000	\$0
Facility master plan	0	41,000
Trades building remodel	0	835,000
Virtual services business plan	0	25,000
Total school for the deaf - General fund	\$100,000	\$901,000
School for the blind - Vision services		
Equipment	\$0	\$39,200
Window replacement	0	31,000
Total school for the blind - Vision services - General fund	\$0	\$70,200
Grand total - General fund	\$100,000	\$1,697,200

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The department of public instruction, school for the deaf, and school for the blind - vision services shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the superintendent of public instruction, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Title I - Part A	\$27,415,262
Title I - School improvement	7,145,000
Title II - Part D - Technology	3,209,375
Individuals With Disabilities Education Act	27,413,988
McKinney-Vento Homeless Assistance Act	150,000
National school lunch program	230,000
The emergency food assistance program	85,426
Clean diesel (passthrough from the state department of health)	1,730,000
Total federal funds	<u>\$67,379,051</u>

The superintendent of public instruction may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. APPROPRIATION - FEDERAL FISCAL STABILIZATION - OTHER GOVERNMENT SERVICES - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the superintendent of public instruction,

for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Department of public instruction administrative costs relating to federal fiscal stimulus payment to schools, including salaries (\$152,533) and operating expenses (\$173,815)	\$326,348
Early childhood learning council operating expenses	20,000
Total federal funds from governor's office	\$346,348

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 5. SUPERINTENDENT'S SALARY - LINE ITEM TRANSFERS - SCHOOL FOR THE DEAF.** The monthly salary for the superintendent of the school for the deaf for the 2009-11 biennium may not exceed the monthly salary level in effect for this position in January 2009. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall transfer funds from the salaries and wages line item to the operating expenses line item contained in subdivision 3 of section 1 of this Act of up to \$100,000 and to the capital assets line item as requested by the superintendent of public instruction to provide funding for a future services plan and implementation for the school for the deaf and for the remodel of the trades building, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. DEFERRED MAINTENANCE - TRANSFERS - SCHOOL FOR THE DEAF.** The school for the deaf is authorized to transfer from the deferred maintenance line to the capital assets line, contained in subdivision 3 of section 1 of this Act, amounts necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 7. DEFERRED MAINTENANCE - TRANSFERS - SCHOOL FOR THE BLIND - VISION SERVICES.** The school for the blind - vision services is authorized to transfer from the deferred maintenance line to the capital assets line, contained in subdivision 4 of section 1 of this Act, amounts necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 8. APPROPRIATION.** There is appropriated from special funds derived from federal funds and other income the sum of \$20,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for grants for the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 9. APPROPRIATION - TUITION APPORTIONMENT.** The sum of \$86,300,000, included in the grants - state school aid line item in subdivision 1 of section 3 of this Act, is from the state tuition fund in the state treasury. Any additional amount in the state tuition fund that becomes available for distribution to public schools is appropriated to the department of public instruction for that purpose for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. STATE SCHOOL AID AND SPECIAL EDUCATION CONTRACTS EXPENDITURE AUTHORITY.** The superintendent of public instruction may expend funds included in the grants - state school aid and grants - special education contracts line items in subdivision 1 of section 1 of this Act in

payment of grants for educational services that were due in the 2007-09 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2009.

**SECTION 11. GIFTED AND TALENTED PROGRAM - FUNDING - DISTRIBUTION.** The sum of \$800,000, included in the grants - state school aid line item in subdivision 1 of section 1 of this Act, must be distributed to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units. State school aid payments for special education must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the school district or unit.

**SECTION 12. TEACHER OF THE YEAR PROGRAM - FUNDING.** The department of public instruction shall administer a teacher of the year program for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of public instruction shall assign responsibility to its department staff to coordinate the annual event, including preparation of application materials, distribution of materials to the selection committee, publicity, and planning of the event at which the recipient of the award is announced. The selection committee appointed by the department of public instruction may not include more than one representative from any education-related organization or association.

**SECTION 13. INDIRECT COST ALLOCATION.** Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

**SECTION 14. STATE AID TO PUBLIC LIBRARIES.** The line item entitled grants in subdivision 2 of section 1 of this Act includes \$1,300,000 for aid to public libraries, of which no more than one-half is to be expended during the fiscal year ending June 30, 2010.

**SECTION 15. FEES DEPOSITED IN VISION SERVICES - SCHOOL FOR THE BLIND OPERATING FUND.** Any moneys included in the estimated income line item in subdivision 4 of section 1 of this Act, collected for subscription fees or braille fees, must be deposited in the North Dakota vision services - school for the blind operating fund in the state treasury and may be spent subject to appropriation by the legislative assembly.

**SECTION 16. CONTINGENT APPROPRIATION - SUPPLEMENTAL TRANSPORTATION AID PAYMENTS.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing supplemental transportation aid payments, for the biennium beginning July 1, 2009, and ending June 30, 2011.

2. If the office of management and budget determines by July 31, 2010, that the June 30, 2011, ending balance of the state general fund will be more than \$30,000,000 in excess of the amount predicted by the office of management and budget at the conclusion of the 2009 legislative session, the superintendent of public instruction shall provide \$5,000,000 as supplemental transportation aid payments to school districts.
3. If the general fund balance requirements of subsection 2 are not met and if the office of management and budget determines by April 30, 2011, that the June 30, 2011, ending balance of the state general fund will be more than \$30,000,000 in excess of the amount predicted by the office of management and budget at the conclusion of the 2009 legislative session, the superintendent of public instruction shall provide \$5,000,000 as supplemental transportation aid payments to school districts.
4. The superintendent of public instruction shall pro rate the supplemental transportation payments according to the percentage of the total transportation formula amount that each school district is entitled to receive under 2009 House Bill No. 1400 as approved by the sixty-first legislative assembly.

**SECTION 17. FUTURE SERVICES PLAN AND IMPLEMENTATION - SCHOOL FOR THE DEAF.** The department of public instruction and school for the deaf shall develop a plan for future services to be offered by the school for the deaf and begin implementing the plan for the biennium beginning July 1, 2009, and ending June 30, 2011. As part of the plan, the department of public instruction and school for the deaf shall:

1. Review the needs of all deaf and hearing-impaired persons throughout the state and develop a plan to provide comprehensive outreach services to all North Dakota citizens who are deaf or hearing-impaired.
2. Explore the development of partnerships with other states relating to the provision of residential and educational services to individuals who are deaf or hearing-impaired.
3. Review current research and national trends in the provision of services to students who are deaf or hearing-impaired.
4. Meet regularly with a transition team appointed by the superintendent of public instruction consisting of representation from the legislative assembly, parents of school for the deaf students, school for the deaf employees, members of the Devils Lake community, school for the deaf alumni, and others.
5. Explore the feasibility of implementing revenue-generating activities at the school for the deaf.
6. Develop a long-range site and facility plan for the school for the deaf campus.

**SECTION 18. AMENDMENT.** Section 15.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-02. Salary.** The annual salary of the superintendent of public instruction is ~~eighty-seven~~ ninety-five thousand one hundred ~~three~~ sixteen dollars through June 30, ~~2008~~ 2010, and ~~ninety~~ ninety-nine thousand ~~five~~ eight hundred ~~eighty-seven~~ seventy-two dollars thereafter.

**SECTION 19. AMENDMENT.** Subsection 6 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

6. a. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility.
- b. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for the payment of special education contract charges in the case of a student with disabilities or from state aid payments to schools in all other cases. For purposes of this subdivision, "actual costs" includes the cost of a summer program if the program is a condition of placement at a residential facility that has been determined by a placing agency or entity to be an appropriate placement for a student.

**SECTION 20. BANK OF NORTH DAKOTA LOAN AUTHORIZATION.** The school for the deaf may borrow the sum of \$835,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated in subdivision 3 of section 1 of this Act for the purpose of remodeling the trades building on the campus of the school for the deaf for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 21. EXEMPTION.** The amount appropriated for the school for the deaf in subdivision 3 of section 3 of chapter 40 of the 2007 Session Laws is not subject to section 54-44.1-11 and any unexpended funds relating to this amount are available for the remodel of the trades building during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 22. EMERGENCY.** The amount of \$1,670,000, of which \$835,000 is from the general fund, included in the capital assets line item in subdivision 3 of section 1 of this Act and sections 3, 4, 8, 20, and 21 of this Act are declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 14

### HOUSE BILL NO. 1014

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the committee on protection and advocacy for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$4,053,516	\$489,802	\$4,543,318
Less estimated income	3,140,229	(152,726)	2,987,503
Total general fund	\$913,287	\$642,528	\$1,555,815
Full-time equivalent positions	27.50	1.00	28.50

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 15**

**HOUSE BILL NO. 1015**

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption; to provide for various transfers; to create and enact section 8 to chapter 160 of the 2007 Session Laws, a new section to chapter 54-27, and paragraph 5 to subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to contingent distributions of grant assistance money, the allocation of funds to certain coal-producing counties, and vacant state employee positions; to amend and reenact sections 18-05.1-01, 18-05.1-02, and 18-05.1-03, subdivision s of subsection 3 of section 32-12.2-02, sections 50-24.5-04, 54-06-08.2, 54-21-24, and 54-24-21.1, and subdivision d of subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to payment from the firefighters death benefit fund, the reciprocal licensure and classification system to carry a firearm or dangerous weapon concealed, the personal needs allowance for individuals in basic care facilities, leasing of office space by state entities, liability of the state, and credit card fees charged by state agencies; to amend and reenact sections 1 and 2 of House Bill No. 1350 and subsection 1 of section 3 of Senate Bill No. 2012, as approved by the sixty-first legislative assembly, relating to the Great Plains applied energy technology center and weather-related transportation funding; to provide an appropriation for a statewide salary equity pool; to establish a statewide salary equity pool; to provide for budget section reports; to provide for a transfer of appropriation authority; to limit the number of full-time equivalent positions; to provide legislative intent; to provide for a legislative council study; to provide an appropriation to the department of emergency services; to provide an appropriation to the department of public instruction; to provide an appropriation for the tobacco prevention and control executive committee; to provide for a biennial budget; to restrict expenditures from the water development trust fund; to provide for a report to the legislative council; to provide for retroactive application; to provide an effective date; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the office of management and budget for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$15, 213,766	\$1,989,620	\$17,203,386
Operating expenses	11,692,136	2,796,958	14,489,094
Capital assets	1,645,019	3,625,279	5,270,298
Grants	54,000	1,000	55,000

46	Chapter 15	Appropriations	
Prairie public broadcasting	1,337,138	2,016,200	3,353,338
State student internship program	0	200,000	200,000
Centers of excellence	10,300,000	(10,300,000)	0
Heritage center expansion project	1,500,000	(1,500,000)	0
Statewide equity plan	10,000,000	(10,000,000)	0
State transfers	43,150,000	(43,150,000)	0
Total all funds	\$94,892,059	(\$54,320,943)	\$40,571,116
Less estimated income	25,229,115	(16,390,195)	8,838,920
Total general fund	\$69,662,944	(\$37,930,748)	\$31,732,196
Full-time equivalent positions	132.50	0.00	132.50

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STABILIZATION - OTHER GOVERNMENT SERVICES FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the office of management and budget, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Information technology, accounting, and verification	<u>\$289,494</u>
Total federal funds	<u>\$289,494</u>

The office of management and budget may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated under this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. APPROPRIATION - PERMANENT OIL TAX TRUST FUND - WEATHER-RELATED ASSISTANCE.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of matching federal United States department of agriculture funds to assist North Dakota ranchers affected by severe winter weather and flooding, for the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 4. APPROPRIATION - TRANSFER - CENTERS OF EXCELLENCE FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,450,000, which the office of management and budget shall transfer to the centers of excellence fund for the purpose of providing funding for 2007-09 centers of excellence awarded projects, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. TRANSFER - PERMANENT OIL TAX TRUST FUND.** During the biennium beginning July 1, 2009, and ending June 30, 2011, the office of management and budget shall transfer \$140,000,000 from the permanent oil tax trust fund to the general fund.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Maintenance	\$3,000,000	\$0
Prairie public broadcasting	686,000	2,016,200
Centers of excellence	15,000,000	0
ConnectND	0	1,000,000
Facility management repairs and equipment	0	2,850,000
Administration projects	0	126,041
Total all funds	\$18,686,000	\$5,992,241
Total special funds	15,000,000	1,008,100
Total general fund	\$3,686,000	\$4,984,141

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The information technology department shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. PERMANENT OIL TAX TRUST FUND.** The estimated income line item in section 1 of this Act includes \$1,008,100 from the permanent oil tax trust fund for the prairie public broadcasting digital conversion, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. EXEMPTION.** The amount appropriated for the fiscal management division, as contained in section 3 of chapter 27 of the 2007 session laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems, during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. INTENT.** Within the authority included in section 1 of this Act are the following grants and special items:

Boys and girls clubwork	\$53,000
State contingencies	\$700,000
State memberships and related expenses	\$611,000
Unemployment insurance	\$1,500,000
Capitol grounds planning commission	\$25,000

**SECTION 10. STATE STUDENT INTERNSHIP PROGRAM.** The human resources division of the office of management and budget may transfer to each eligible agency appropriated general fund spending authority from the state student internship program line item contained in section 1 of this Act.

**SECTION 11. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the sixty-first legislative assembly that 2009-11 compensation adjustments for regular state employees are to vary based on documented performance and equity and are not necessarily to be five percent annual increases for each employee. General increases based on legislative appropriations are to be given beginning with the month of July 2009, to be paid in August 2009, and beginning with the month of July 2010, to be paid in

August 2010. Each agency appropriation is increased by five percent for the first year of the 2009-11 biennium and five percent for the second year of the 2009-11 biennium.

Employees whose overall documented performance level does not meet standards are not eligible for any salary increase. Each employee whose documented performance meets all standards is to receive a minimum increase of \$100 on July 1, 2009, and \$100 on July 1, 2010.

Probationary employees are not entitled to the general increases. However, probationary employees may be given all or a portion of the increases effective in July, paid in August, or upon completion of probation, at the discretion of the appointing authority.

During the biennium, no salary increase other than the \$100 minimum increase or a temporary increase may be given to an employee whose salary exceeds or would exceed the salary range maximum.

**SECTION 12. AMENDMENT.** Section 18-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**18-05.1-01. Firefighters death benefit fund Payments to deceased firefighter's survivor.** The firefighters death benefit fund is a special fund in the state treasury. The revenue provided in section 26.1-03-17 must be deposited in the fund and is appropriated on a continuing basis to the insurance commissioner for disbursement as provided in this chapter. The insurance commissioner shall administer the fund.

**SECTION 13. AMENDMENT.** Section 18-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**18-05.1-02. Payments from firefighters death benefit fund.** ~~The governing body of a municipality having a paid fire department or the governing body of a city or rural fire protection district having no paid fire department may request that the insurance commissioner pay ten thousand dollars from the firefighters death benefit fund to the estate of a firefighter who dies from an injury sustained while responding to, during, or within forty-eight hours after a fire emergency or training activity. The insurance commissioner shall pay ten thousand dollars to the a deceased firefighter's estate survivor upon receipt of the a request for payment and upon receipt of evidence that the of a line of duty death occurred from an injury sustained while responding to, during, or within forty-eight hours after a fire emergency from the fire chief or the fire chief's designee of a city fire department, rural fire department, or rural fire protection district.~~

**SECTION 14. AMENDMENT.** Section 18-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**18-05.1-03. Definition Definitions.** For purposes of this chapter, ~~firefighter:~~

1. "Firefighter" means an individual who is a member of a paid or volunteer fire department that is a part of or is administered by this state, any political subdivision of this state, or a rural fire protection district.
2. "Line of duty death" means a death that was due to an injury sustained while performing firefighter duties if the death occurred within forty-eight hours of participating in an emergency response or training event.

Death from a heart attack or stroke is deemed to be a line of duty death if it occurs within forty-eight hours of an emergency response or training event.

3. "Survivor" means the spouse of a deceased firefighter who died in the line of duty. If there is no spouse, the term means the individual designated in writing by the deceased firefighter as beneficiary of the Public Safety Officers' Benefit Act [42 U.S.C. 3796 et seq.] death benefit, or if no beneficiary is designated, the deceased firefighter's estate.

**SECTION 15. AMENDMENT.** Subdivision s of subsection 3 of section 32-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

- s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the ~~vehicle is rented for a period of thirty days or less and~~ the loss is not covered by the state employee's personal insurance or by the vehicle rental company.

<sup>3</sup> **SECTION 16. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code as amended in section 21 of House Bill No. 1012, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic care or adult family foster care facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~seventy-five~~ eighty-five dollars, less that person's total income.

**SECTION 17. AMENDMENT.** Section 54-06-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-08.2. Payment by credit or debit card or by electronic fund transfer - State credit card processor - Fees.**

1. A state agency, board, or commission, the judicial branch, or any political subdivision may accept payment by credit or debit card or by electronic fund transfer of any fee, interest, penalty, tax, or other payment that is due or collectible by the agency, board, or commission. The judicial branch may accept payment by credit or debit card or by electronic fund transfer for any fees, costs, or other assessments required or imposed under state law or court rule.
2. The Bank of North Dakota is the state credit card administrator for credit card transactions of state agencies, boards, or commissions. The Bank of North Dakota shall select a credit card processor or processors to provide credit card services to state agencies, boards, and commissions. All funds from credit card transactions must be deposited

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<sup>3</sup> Section 50-24.5-04 was also amended by section 21 of House Bill No. 1012, chapter 12.

in the respective entity's account in the Bank of North Dakota. If on January 4, 1997, any state agency, board, or commission uses a credit card processor other than a credit card processor selected by the Bank of North Dakota, it may continue using that processor until June 30, 1999, or until transition to the state processor is available with minimal fee or penalty, whichever is earlier. The judicial branch may accept payment by credit card for any fees, costs, or other assessments required or imposed under state law or court rule.

3. Except as otherwise provided under section 20.1-03-32, in accordance with rules adopted by the office of management and budget, an executive branch agency may charge a fee to be added to a payment as a service charge for the acceptance of a payment made by a credit or debit card or an electronic fund transfer. The office of management and budget shall adopt rules establishing the terms under which executive agencies may charge a service fee under this subsection.

**SECTION 18. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - STATEWIDE SALARY EQUITY POOL.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$9,000,000, or so much of the sum as may be necessary, and from special funds, derived from federal funds or other income, the sum of \$6,984,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing statewide salary equity adjustments for state employees of the executive branch in accordance with provisions of section 19 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 19. STATEWIDE SALARY EQUITY POOL FOR EXECUTIVE BRANCH STATE EMPLOYEES.** The statewide salary equity pool appropriation included in section 18 of this Act must be used for market equity compensation adjustments for state employees of executive branch agencies, institutions, and departments, excluding entities under the control of the state board of higher education. The market equity adjustments are to begin with the month of July 2009, to be paid in August 2009. The market equity adjustments must be given after any July 2009 general compensation increases authorized by the sixty-first legislative assembly. The market equity adjustments are independent of any general salary increase provided by the legislative assembly.

The market equity increases are to be prioritized based on a statewide plan to address occupational market disparities, economic growth areas, recruitment and retention challenges, and internal and external pay inequities for employees who are critical to the mission of the agency. The plan must give priority to employees who have been employed by the state for the greatest length of time and are furthest below their salary range midpoint. The office of management and budget, in developing the plan, shall consider employee pay comparisons to similar occupational classifications of other North Dakota employers and employers in Montana, South Dakota, and Wyoming.

Probationary employees are eligible for the market equity increases. Employees whose documented performance levels do not meet standards are not eligible for the market equity increases.

Human resource management services shall provide a model base plan to each agency. Agencies may adopt the model plan, adopt the model plan with exceptions, or offer an alternative plan that meets the intent outlined in this section.

Notwithstanding any other provisions of law relating to the allocation of funds from this statewide salary equity pool, the office of management and budget shall transfer appropriation authority from the statewide salary equity pool appropriation included in section 18 of this Act to eligible agencies as determined by the office of management and budget based on each agency's submission and approval by the office of management and budget of a salary equity plan for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 20. AMENDMENT.** Section 54-21-24 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-24. Additional office space may be obtained outside state capitol.** ~~In the event that~~ If office space in the state capitol ~~building~~ becomes insufficient to accommodate the various state departments, agencies, and boards, the director of the office of management and budget ~~may upon request of the department, agency, or board shall negotiate for, contract for, and obtain such~~ additional office space outside the state capitol in the city of Bismarck or in the Bismarck area as is necessary in order to provide accommodations for all state departments, agencies, and boards. When office space is obtained in this manner, ~~any~~ the department, agency, or board ~~which that~~ occupies ~~such the~~ office space ~~must be~~ is deemed to be located at the state capitol for purposes of statutes ~~which that~~ require that a department, agency, or board must be maintained at the state capitol, and the director shall charge an amount equal to the fair value of the office space and other services rendered to all departments ~~which that~~ receive and expend moneys from other than the general fund, except that for good cause the amounts charged may be waived by the director for a one-year period of time with ~~such the~~ waiver being subject to further annual renewals after proper application has been filed with the director. The department, agency, or board for which the office space is sought must approve the office space before the director may finalize a contract or lease for the office space.

**SECTION 21. AMENDMENT.** Section 54-21-24.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-24.1. Lease of additional space by state agencies, departments, offices, officers, boards, and institutions.** ~~No~~ A lease or rental agreement or renewal of ~~such the~~ lease or rental agreement for the lease or rental of buildings or portions of buildings for use by ~~the state may be entered into by~~ state agencies, departments, offices, officers, boards, and institutions, other than institutions under the board of higher education, the adjutant general and department of transportation office and storage space for field engineering and maintenance crews, unless approved may be entered by the director of the office of management and budget ~~and unless the attorney general has determined~~ subject to a determination of the legal sufficiency of such the lease or rental agreement. To ~~assure~~ ensure economy, efficiency, and cooperation between the state and its political subdivisions, and to limit the number of locations of state offices for the convenience of ~~persons~~ individuals traveling to ~~such the~~ offices, the director shall promulgate rules ~~and regulations~~ governing the lease or rental of additional buildings or portions ~~thereof~~ of the buildings by ~~such~~ state agencies, departments, offices, officers, boards, and institutions other than those under the board of higher education, the adjutant general, and department of transportation office and storage space for field engineering and maintenance crews. The department, agency, or board for which the office space is sought must approve the office space before the director may finalize a contract or lease for the office space.

**SECTION 22. LEGISLATIVE COUNCIL STUDY - CAPITOL GROUNDS.**

During the 2009-10 interim, the legislative council shall consider studying the capitol complex master plan, including a review of parking needs on the capitol grounds. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

\* **SECTION 23.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Vacant state employee positions salary savings - Budget section reports - Budget section review and approval.** The head of each executive branch agency, department, and institution shall report each month to the office of management and budget the number of vacant full-time equivalent employee positions and related salary and fringe benefit savings. The office of management and budget shall report at each budget section meeting on the cumulative savings resulting from the vacant positions. Agencies, departments, and institutions reporting vacant positions under this section may spend funds available as a result of these vacant positions, subject to approval by the office of management and budget in an amount that does not exceed a cumulative amount of two million dollars for a biennium for payment of accrued annual leave and sick leave balances for eligible employees upon retirement or resignation, employee workload increases, employee reclassifications, and unanticipated overtime. The office of management and budget shall report periodically to the budget section on the amounts spent for each of these purposes by agency. Agencies, departments, and institutions may not spend any remaining savings from these vacant positions without prior approval of the office of management and budget and the budget section.

<sup>4</sup> **SECTION 24.** Paragraph 5 to subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code is created and enacted as follows:

- (5) The state treasurer shall allocate funds provided by legislative appropriation to cities, the county general fund, and school districts within a coal-producing county according to the allocation method provided in subdivision a in an amount to offset fifty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year. The state treasurer shall make the allocation, within the limits of legislative appropriations, under this paragraph at the time and in the manner funds are distributed under this section. The state treasurer shall include in each biennial budget request the amounts estimated to be necessary for the biennium for purposes of this paragraph, based on the allocations under this subdivision in the most recent calendar years.

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<sup>4</sup> Section 57-62-02 was also amended by section 1 of Senate Bill No. 2377, chapter 585.

<sup>5</sup> **SECTION 25. AMENDMENT.** Subdivision d of subsection 1 of section 62.1-04-03 of the North Dakota Century Code as amended in section 1 of Senate Bill No. 2415, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

- d. The applicant has the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedure conducted by a certified firearm or dangerous weapon instructor. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a firearm or dangerous weapon instructor based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation.

**SECTION 26. AMENDMENT.** Subsection 1 of section 3 of Senate Bill No. 2012, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

1. Ten million dollars to townships in accordance with the ~~formula~~ provisions used to distribute funds to townships under section 54-27-19.1, except that organized townships are not required to provide matching funds to receive distributions under this section.

**SECTION 27. ELECTRONIC BUDGET PRESENTATION - PILOT PROJECT.** The office of management and budget shall select two agencies to present their proposed 2011-13 budgets and related information electronically to the appropriations committees of the sixty-second legislative assembly. Each state agency selected shall use an electronic format to present and distribute any information regarding its budget, including testimony, supporting documentation, and related materials.

\* **SECTION 28. AMENDMENT.** Section 1 of House Bill No. 1350, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing a grant for construction of a great plains applied energy ~~research~~ technology center on the Bismarck state college campus, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of commerce may spend the general fund appropriation only when the department certifies to the office of management and budget that:

1. The center has completed a detailed business plan demonstrating positive outcomes relating to the development of end-use products and

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<sup>5</sup> Section 62.1-04-03 was also amended by section 1 of Senate Bill No. 2415, chapter 605.

the public policy required to support the products; the use of technology developed at regional research universities; and the testing, development, and application of products and technology to address problems relating to the transmission and storage of electricity;

2. Other nonstate matching funds of three dollars for each one dollar of grant funds are available for all costs of the center, a portion of which must be from the private sector;
- 2- 3. The state will be a proportionate owner in the center based on the state's contribution percentage of all costs of the center;
- 3- 4. The state will not be responsible for any future operational costs, including property tax, of the center; and
- 4- 5. The center will be subject to local property tax assessments at the discretion of the local taxing authority;
6. The grant recipient is a state entity or private nonprofit entity; and
7. The department has completed an independent comprehensive commercialization study, developed a business and operational plan for the center with a clearly defined mission and objectives, and received budget section approval.

\* **SECTION 29. AMENDMENT.** Section 2 of House Bill No. 1350, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**SECTION 2. ~~REPORT~~ REPORTS TO THE BUDGET SECTION.** The department of commerce shall present the independent comprehensive commercialization study and related business and operational plan for the center to the budget section for approval. The department shall also provide a report to the budget section at its first meeting after September 1, 2009, and at its first meeting after March 1, 2010, regarding the status of the construction of a great ~~plane~~ plains applied energy ~~research~~ technology center, including the extent to which nonstate matching funds have been made available for the project.

**SECTION 30.** Section 8 to chapter 160 of the 2007 Session Laws is created and enacted as follows:

**SECTION 8. CONTINGENT MONEY.** If any money appropriated to the state board of higher education for grant assistance to tribally controlled community colleges remains after the board complies with all statutory payment obligations imposed under this Act, the state board shall distribute a prorated amount per full-time equivalent nonbeneficiary student.

\* **SECTION 31. STATE EMPLOYEE ACCRUED LEAVE PAYMENTS - BUDGET SECTION REPORT.** The office of management and budget shall prepare and report to the budget section alternative methods of budgeting for the compensation of state employee accrued annual leave and sick leave. The information presented must include the number of employees compensated and the total amount paid by agency for the 2007-09 and 2005-07 bienniums. The office of management and budget shall present this report to the budget section at its first meeting after December 1, 2009. The budget section shall determine the method to

be used for providing funding for these items in the preparation of the 2011-13 executive budget.

**\* SECTION 32. 2011-13 BIENNIUM BUDGET REQUESTS - RECOMMENDATION - FULL-TIME EQUIVALENT POSITIONS.** Notwithstanding any other provision of law, the office of management and budget, in preparation of the 2011-13 executive budget, shall limit the total number of full-time equivalent positions for executive branch agencies, departments, and institutions included in agency budget requests and the executive budget recommendation to the same level approved by the sixty-first legislative assembly in total for these entities, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 33. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the department of public instruction for the development and customization of a North Dakota personal finance schoolbook, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 34. APPROPRIATION - DEPARTMENT OF EMERGENCY SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the department of emergency services for the purpose of providing grants to eligible political subdivisions for up to fifty percent of the costs incurred by the political subdivisions in meeting the local cost-share required by the federal emergency management agency for disaster, emergency response, and recovery costs, and for up to fifty percent of the costs incurred by the political subdivisions for disaster, emergency response, and recovery costs not covered by the federal emergency management agency, for the period beginning with the effective date of this Act and ending June 30, 2011. For the purposes of this section, an eligible political subdivision is one that experienced damage or destruction due to a tornado during the summer of 2007.

**SECTION 35. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the tobacco prevention and control trust fund, not otherwise appropriated, to the tobacco prevention and control executive committee for the purpose of defraying the expenses of the committee, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Comprehensive tobacco control	\$0	\$12,882,000	\$12,882,000
Total special funds	\$0	\$12,882,000	\$12,882,000
Full-time equivalent positions	0.00	4.00	4.00

**SECTION 36. APPROPRIATION.** There is appropriated out of any moneys in the tobacco prevention and control trust fund, not otherwise appropriated, the sum of \$62,403, or so much of the sum as may be necessary, to the tobacco prevention and control executive committee for the purpose of defraying the expenses of the committee; developing, implementing, and administering the comprehensive tobacco control and prevention plan; and contracting with a consultant to facilitate the development of the comprehensive plan, for the period beginning January 1, 2009, and ending June 30, 2009.

**SECTION 37. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that any act of the tobacco prevention and control executive

committee or its employees is an act of the state of North Dakota functioning in its sovereign and governmental capacity. As a state entity the committee is subject to accountability requirements, including laws relating to state audits, fiscal management, records retention, and procurement. Employees of the committee are part of the state classified system.

**SECTION 38. REPORTS TO THE BUDGET SECTION.** The tobacco prevention and control executive committee shall report to the budget section quarterly on the implementation of the comprehensive tobacco prevention and control plan and outcomes achieved, for the 2009-10 interim.

**SECTION 39. Water development trust fund expenditures.** Any moneys deposited in the water development trust fund under section 54-27-25 may be spent only pursuant to legislative appropriations.

**SECTION 40. Biennial budget.** The tobacco prevention and control executive committee shall prepare and submit a biennial budget to the office of management and budget as required by section 54-44.1-04.

**SECTION 41. RETROACTIVE APPLICATION.** Section 36 of this Act is retroactive to January 1, 2009.

**SECTION 42. EFFECTIVE DATE.** Section 24 of this Act is effective for taxable events occurring after June 30, 2011.

**SECTION 43. EMERGENCY.** Sections 2, 3, 30, 34, 36, and 41 of this Act are declared to be an emergency measure.

Approved May 11, 2009

Filed May 11, 2009

\* Sections 23, 28, 29, 31, and 32 of House Bill No. 1015 were vetoed, see chapter 632.

## CHAPTER 16

### HOUSE BILL NO. 1016

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide statements of legislative intent; to provide an appropriation; to provide for transfers; to provide an exemption; to amend and reenact subsections 3 and 4 of section 37-29-03 as created by section 1 of House Bill No. 1181, as approved by the sixty-first legislative assembly, and section 54-06-27 of the North Dakota Century Code, relating to job protections for volunteer emergency responders of the adjutant general's office and leave for emergency service volunteers; to provide for a report to the budget section; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the office of the adjutant general for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

	NATIONAL GUARD		
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,216,409	\$625,027	\$4,841,436
Operating expenses	3,848,828	(171,937)	3,676,891
Capital assets	213,667	10,003	223,670
Grants	449,514	500,000	949,514
Civil air patrol	160,091	62,745	222,836
Tuition, recruiting, and retention	2,407,500	0	2,407,500
Air guard contract	9,474,114	77,429	9,551,543
Army guard contract	66,423,926	(6,365,827)	60,058,099
Reintegration program	295,218	1,082,191	1,377,409
Veterans' cemetery	354,635	134,506	489,141
Total all funds	\$87,843,902	(\$4,045,863)	\$83,798,039
Less estimated income	74,786,605	(6,499,373)	68,287,232
Total general fund	\$13,057,297	\$2,453,510	\$15,510,807

##### Subdivision 2.

	DEPARTMENT OF EMERGENCY SERVICES		
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,788,202	\$1,595,403	\$9,383,605
Operating expenses	3,829,400	287,657	4,117,057
Capital assets	440,377	1,576,970	2,017,347
Grants	40,794,635	3,607,632	44,402,267
Radio communications	0	3,745,000	3,745,000

58	Chapter 16		Appropriations
Total all funds	\$52,852,614	\$10,812,662	\$63,665,276
Less estimated income	46,889,068	4,711,801	51,600,869
Total general fund	\$5,963,546	\$6,100,861	\$12,064,407

Subdivision 3.

**BILL TOTAL**

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$19,020,843	\$8,954,371	\$27,975,214
Grand total special funds	121,675,673	51,996,198	173,671,871
Grand total all funds	\$140,696,516	\$60,950,569	\$201,647,085
Full-time equivalent positions	232.00	0.00	232.00

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the adjutant general, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Military energy-related maintenance and repairs \$2,522,270

The adjutant general may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STABILIZATION - OTHER GOVERNMENT SERVICES.** There is appropriated from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$1,261,500, or so much of the sum as may be necessary, to the adjutant general for the purpose of replacing boilers, constructing an operations center, and enhancing security relating to the national crime information center, for the biennium beginning July 1, 2009, and ending June 30, 2011. Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget.

**SECTION 4. APPROPRIATION - FLOOD-RELATED COSTS.** There is appropriated from special funds derived from federal funds or other income the sum of \$50,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying expenses relating to 2009 flood disasters, for the period beginning with the effective date of this Act through June 30, 2011.

**SECTION 5. APPROPRIATION - VOLUNTEER MANAGEMENT GRANT PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$400,000, or so much of the sum as may be necessary, to the department of emergency services to provide grants to political subdivisions for payments to entities that have provided volunteer management services within that political subdivision for a particular disaster in an

amount that may not exceed \$50,000 for each disaster, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Computer-aided dispatch project	\$980,000	\$0
Motorola lease purchase payment (general fund portion)	1,084,970	1,525,347
Special assessments	92,000	0
Deferred maintenance	625,000	0
Veterans' bonus multiple deployments	0	500,000
Technology projects	0	3,600,000
Technology equipment and software purchases	0	160,000
Total general fund	\$2,781,970	\$5,785,347

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The adjutant general shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. VETERANS' CEMETERY MAINTENANCE FUND - APPROPRIATION.** In addition to the amount appropriated to the adjutant general in the veterans' cemetery line item in subdivision 1 of section 1 of this Act, there is appropriated any additional funds which are received and deposited in the veterans' cemetery maintenance fund pursuant to sections 37-03-14 and 39-04-10.10 for the operation of the North Dakota veterans' cemetery for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. MAINTENANCE AND REPAIRS - TRANSFERS.** The adjutant general may transfer to the operating expenses and capital assets line items contained in section 1 of this Act up to the sum of \$500,000 from the various other line items contained in section 1 of this Act, as determined necessary by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2009, and ending June 30, 2011. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

**SECTION 9. EXEMPTION.** Funding of \$980,000 from the general fund appropriated for the computer-aided dispatch project, as contained in subdivision 2 of section 3 of chapter 42 of the 2007 Session Laws, is not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or related revenues are available and may be expended during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. LEGISLATIVE INTENT - REINTEGRATION PROGRAM.** It is the intent of the sixty-first legislative assembly that the adjutant general use all federal funds available for the reintegration program before using the \$1,377,409 appropriated for the program in subdivision 1 of section 1 of this Act. The funding for the program is to be used for providing support for all service members and their families for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 11. REINTEGRATION PROGRAM - REPORT TO THE BUDGET SECTION.** The adjutant general shall provide a report to the budget section during the 2009-10 interim regarding reintegration program expenditures and the program's impact on service members.

**SECTION 12. LEGISLATIVE INTENT - STATE RADIO COMMUNICATIONS COVERAGE.** It is the intent of the sixty-first legislative assembly that the funding of \$500,000 appropriated in the radio communications line item in subdivision 2 of section 1 of this Act is for improving state radio communications coverage in the state. Of the \$500,000, \$100,000 is for conducting a study of the effects of next generation 911, \$75,000 is for alternatives to constructing new state radio towers, and \$325,000 is for implementing a new state radio tower site near Wales.

**SECTION 13. LEGISLATIVE INTENT - DISASTER FUNDING.** It is the intent of the sixty-first legislative assembly that 2009 flood disaster payments to political subdivisions be made allowing for a six percent local share. The difference between current federal funding and anticipated federal funding is to be made by the state until federal reimbursement funds are received for the period beginning with the effective date of this Act through June 30, 2011.

<sup>6</sup> **SECTION 14. AMENDMENT.** Subsections 3 and 4 of section 37-29-03 of the North Dakota Century Code as created by section 1 of House Bill No. 1181, as approved by the sixty-first legislative assembly, are amended and reenacted as follows:

3. Subsection 1 does not apply if due to serving as a volunteer emergency responder, the employee is absent or tardy from the employee's place of employment for a period that exceeds ~~ten~~ twenty regular ~~business~~ working days in a calendar year.
4. In order to receive the protections of subsection 1, an employee who will be absent or tardy from the employee's place of employment while serving as a volunteer emergency responder in the case of a disaster or emergency shall make reasonable efforts to notify the employer of that service ~~and shall continue to make these reasonable notification efforts over the course of the absence.~~

<sup>7</sup> **SECTION 15. AMENDMENT.** Section 54-06-27 of the North Dakota Century Code as amended in section 2 of House Bill No. 1181, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**54-06-27. Emergency service volunteers - Leave.** Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, a search emergency by the air force rescue coordination center or by the department of emergency services, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency or the governing body of any political subdivision may grant a leave of absence to any full-time employee of that governmental entity who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer,

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<sup>6</sup> Section 37-29-03 was created by section 1 of House Bill No. 1181, chapter 313.

<sup>7</sup> Section 54-06-27 was also amended by section 2 of House Bill No. 1181, chapter 313.

volunteer member of the North Dakota army or air national guard, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing that employee to provide voluntary emergency services. An individual on leave under this section is not deemed to be an employee of the governmental entity for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed ~~ten~~ twenty working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

**SECTION 16. EMERGENCY.** Sections 2, 3, 4, 5, 13, 14, and 15 are declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 17

### HOUSE BILL NO. 1017

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to create and enact a new section to chapter 20.1-04 of the North Dakota Century Code, relating to permits for exempt training areas for gun dogs; and to amend and reenact section 20.1-02-05.1 and subsection 5 of section 20.1-17-01 of the North Dakota Century Code, relating to game and fish department land acquisitions and agency rules adopted under the Nonindigenous Aquatic Nuisance Prevention and Control Act.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the game and fish department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$19,013,463	\$2,566,824	\$21,580,287
Operating expenses	11,690,087	1,109,913	12,800,000
Capital assets	3,284,241	680,759	3,965,000
Grants	6,652,184	(108,184)	6,544,000
Land habitat and deer depredation	12,786,351	(1,706,189)	11,080,162
Noxious weed control	450,000	100,000	550,000
Recruitment and retention study	30,000	(30,000)	0
Grants, gifts, and donations	500,000	(100,000)	400,000
Nongame wildlife conservation	120,000	0	120,000
Lonetree reservoir	1,594,713	60,976	1,655,689
Wildlife services	680,000	88,800	768,800
Ramp improvements and marina development	1,040,000	(1,040,000)	0
Total special funds	\$57,841,039	\$1,622,899	\$59,463,938
Full-time equivalent positions	155.00	2.00	157.00

<sup>8</sup> **SECTION 2. AMENDMENT.** Section 20.1-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-05.1. Land acquisitions - Statewide land acquisition plan.** The director shall establish a comprehensive statewide land acquisition plan that must be approved by the budget section of the legislative council. Every land acquisition

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<sup>8</sup> Section 20.1-02-05.1 was also amended by section 98 of House Bill No. 1436, chapter 482.

made by the department exceeding ten acres [4.05 hectares] or ten thousand dollars must be approved by the budget section. Prior to any land acquisition, the department shall have the land in question appraised by a certified appraiser. The department may not acquire any land for an amount that exceeds the appraised value except for parcels or tracts of land less than forty acres [16.19 hectares] which may be acquired for up to two hundred percent of the appraised value.

**SECTION 3.** A new section to chapter 20.1-04 of the North Dakota Century Code is created and enacted as follows:

**Gun dog training area - Permit.** Notwithstanding section 20.1-04-12, a professional trainer may apply to and obtain from the department a permit designating a specific training area, not to exceed forty acres [16.19 hectares], as an exempt training area.

1. In the exempt training area, a professional trainer may train or run any gun dog or allow the gun dog to run loose at any time.
2. The fee for the permit may not exceed ten dollars per year.

**SECTION 4. AMENDMENT.** Subsection 5 of section 20.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Develop rules to prevent the movement of aquatic nuisance species into or within the state. In addition to requirements under chapter 28-32, the department shall conduct a cost-benefit analysis for any rule proposed for adoption under this chapter.

Approved May 1, 2009  
Filed May 4, 2009

## CHAPTER 18

### HOUSE BILL NO. 1018

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state historical society; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state historical society for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,166,385	\$1,202,290	\$8,368,675
Operating expenses	1,913,911	445,299	2,359,210
Capital assets	3,423,581	472,631	3,896,212
Grants	1,000,000	0	1,000,000
Cultural heritage grants	375,000	129,500	504,500
Yellowstone-Missouri-Fort Union Commission	4,492	0	4,492
Snow angel project	<u>10,000</u>	<u>(10,000)</u>	<u>0</u>
Total all funds	\$13,893,369	\$2,239,720	\$16,133,089
Less estimated income	<u>5,318,766</u>	<u>(1,659,929)</u>	<u>3,658,837</u>
Total general fund	\$8,574,603	\$3,899,649	\$12,474,252
Full-time equivalent positions	60.00	2.00	62.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Lincoln bicentennial	\$50,000	\$0
Capital projects and deferred maintenance	1,298,000	0
Marketing	85,000	75,000
Chateau de Mores interpretive center	195,000	0
Medal of honor monument	30,000	0
New exhibit development	0	330,000
Compact shelving for archives	0	350,000
Extraordinary repairs and small capital projects	0	666,500
Total general fund	<u>\$1,658,000</u>	<u>\$1,421,500</u>

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The state historical society shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. REVOLVING FUND - APPROPRIATION.** All fees collected by the state historical society and deposited in the revolving fund established pursuant to section 55-03-04 are appropriated to the state historical society for the purposes provided in chapter 55-03, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. GIFTS, GRANTS, AND BEQUESTS - APPROPRIATION.** All gifts, grants, devises, bequests, donations, and assignments received by the state historical society and deposited with the state treasurer pursuant to section 55-01-04 are appropriated to the state historical society for the purposes provided in section 55-01-04, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the state historical society, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Protective structure for locomotive at Camp Hancock	\$150,000
Fort Totten commissary storehouse exhibit and signage	385,000
Geographic information system scanning and integration	<u>150,000</u>
Total federal funds (from department of transportation transportation enhancement funds)	<u>\$685,000</u>

The state historical society may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 6. EMERGENCY.** Section 5 of this Act is declared to be an emergency measure.

Approved May 4, 2009  
Filed May 5, 2009

## CHAPTER 19

### HOUSE BILL NO. 1019

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department and the International Peace Garden; to provide for a transfer; to amend and reenact subsection 5 of section 55-08-05 and section 55-08-14.1 of the North Dakota Century Code, relating to recreational grants and concession agreements; to provide legislative intent; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department for the purpose of defraying the expenses of the parks and recreation department and the International Peace Garden, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

#### PARKS AND RECREATION DEPARTMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$1,949,169	\$233,516	\$2,182,685
Natural resources	10,898,861	2,775,814	13,674,675
Recreation	8,636,524	(575,725)	8,060,799
Deferred maintenance	0	835,400	835,400
Total all funds	\$21,484,554	\$3,269,005	\$24,753,559
Less estimated income	<u>13,348,117</u>	<u>(1,200,063)</u>	<u>12,148,054</u>
Total general fund	\$8,136,437	\$4,469,068	\$12,605,505
Full-time equivalent positions	50.50	2.50	53.00

##### Subdivision 2.

#### INTERNATIONAL PEACE GARDEN

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
International Peace Garden	\$736,854	\$1,991,600	\$2,728,454
International music camp contingency	400,000	(400,000)	0
Total all funds	<u>\$1,136,854</u>	<u>\$1,591,600</u>	<u>\$2,728,454</u>
Less estimated income	200,000	(200,000)	0
Total general fund	\$936,854	\$1,791,600	\$2,728,454

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$9,073,291	\$6,260,668	\$15,333,959
Grand total special funds	<u>13,548,117</u>	<u>(600,063)</u>	<u>12,948,054</u>
Grand total all funds	\$22,621,408	\$5,660,605	\$28,282,013

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Parks capital projects and deferred maintenance	\$2,295,000	\$2,359,768
Park signage and maps	0	20,000
Online reservation system and equipment replacement	660,000	0
International Peace Garden capital projects and deferred maintenance	2,433,000	86,600
International Peace Garden loan repayment	0	1,850,000
Parks community grant program	0	400,000
International Peace Garden equipment	0	55,000
Total general fund	\$5,388,000	\$4,771,368

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The parks and recreation department shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. DEFERRED MAINTENANCE - TRANSFERS.** The parks and recreation department may transfer from the deferred maintenance line to other lines contained in subdivision 1 of section 1 of this Act, amounts necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 4. GAME AND FISH OPERATING FUND - TRANSFER.** The sum of \$222,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the game and fish operating fund, or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at state parks for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. EXEMPTION.** Up to \$400,000 of the recreation line item contained in subdivision 1 of section 1 of this Act is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may be expended during the biennium beginning July 1, 2011, and ending June 30, 2013, for the purposes provided in section 55-08-14.1.

**SECTION 6. AMENDMENT.** Subsection 5 of section 55-08-05 of the North Dakota Century Code is amended and reenacted as follows:

5. Provide facilities for the sale to the public of food, nonintoxicating beverages, except beer and wine sales as provided in subsections 6

and 7, and other merchandise and personal services of a suitable nature, and make buildings, structures, and other recreational facilities available for use and occupancy by the public, or contract for the lease of the buildings, structures, and facilities to a concessionaire to be operated on the terms and compensation basis as the director determines to be in the best interest of the state. The duration of a concession agreement may not exceed twenty years. A bond must be required of each concessionaire in the amount the director determines, conditioned upon the faithful performance of all duties under the lease and proper accounting for all funds.

**SECTION 7. AMENDMENT.** Section 55-08-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-14.1. Leadership and facilities grants.** The parks and recreation department shall administer the funds made available to provide for recreational leadership grants and facilities grants in the following manner:

1. ~~One fourth~~ Up to twenty-five percent of all moneys made available to the department for the grants ~~must~~ may be used for a leadership grant program. ~~This program shall provide enhanced recreational opportunities to state residents, particularly in with priority given to communities with a population of thirteen thousand or less, regardless of age or state of health. Moneys. Within the availability of legislative appropriations, moneys must be provided to grant recipients over a three-year period on a three to one seventy-five percent matching basis for the first year of a grant, one to one fifty percent matching basis for the second year of a grant, and one to three twenty-five percent matching basis for the third year of the grant, after which the program must be fully funded locally.~~
2. ~~Three fourths~~ No less than seventy percent of all moneys made available to the department for the grants must be used for a facilities grant program. This program must provide funds, on a fifty percent matching basis, for political subdivisions to improve, renovate, or construct any type of facility primarily used for ~~community~~, park, and recreation purposes.
3. Up to five percent of all moneys made available to the department biennially for the recreational and facilities grants program may be used by the department for administration of leadership and facilities grants and to ensure completion of the projects funded.

**SECTION 8. LEGISLATIVE INTENT - FEDERAL FISCAL STIMULUS FUNDS.** It is the intent of the sixty-first legislative assembly that the Fort Abraham Lincoln foundation be encouraged to seek federal fiscal stimulus funds for architectural and archeological services at Fort Abraham Lincoln.

**SECTION 9. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the parks and recreation department, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Turtle River state park pedestrian bridge	\$300,000
Turtle Mountain scenic byway acquisition/trails	200,000
Fort Abraham Lincoln CCC building rehabilitation	<u>300,000</u>
Total federal funds	\$800,000

The parks and recreation department may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 10. EMERGENCY.** Section 9 of this Act is declared to be an emergency measure.

Approved May 1, 2009

Filed May 5, 2009

## CHAPTER 20

### HOUSE BILL NO. 1020

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide legislative intent; to provide exemptions; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administrative and support services	\$2,454,866	\$522,808	\$2,977,674
Water and atmospheric resources	170,544,397	137,223,637	307,768,034
Total all funds	\$172,999,263	\$137,746,445	\$310,745,708
Less estimated income	162,122,016	134,799,793	296,921,809
Total general fund	\$10,877,247	\$2,946,652	\$13,823,899
Full-time equivalent positions	84.00	2.00	86.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 and are not a part of the entity's base budget for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Red River Valley water supply project	\$3,000,000	\$0
Total general fund	\$3,000,000	\$0

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** There is appropriated out of any federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$12,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of providing funding for the southwest pipeline project, for the period beginning with the effective date of this Act and ending June 30, 2011.

The state water commission may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and support services line item in section 1 of this Act includes \$200,000 from the general fund that the state water commission shall provide as a grant to the game and fish department for law enforcement activities on sovereign lands in the state, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amounts included in the estimated income line item in section 1 of the Act, any additional amounts in the resources trust fund and water development trust fund that become available are appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2011. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

**SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$45,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2009, and ending June 30, 2011. Any funds not spent by June 30, 2011, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. These funds may be used only for land purchases and construction; may not be used for administration, engineering, legal, planning, or other similar purposes; and are not subject to the sixty-five percent funding requirement contained in Senate Bill No. 2316 (2009).

**SECTION 8. LEGISLATIVE INTENT - FARGO FLOOD CONTROL.** It is the intent of the sixty-first legislative assembly that a total of \$75,000,000 be committed by the state to match a grant of federal funds for Fargo flood control, of which \$45,000,000 is appropriated in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. LEGISLATIVE INTENT - STATE WATER COMMISSION PROJECTS.** It is the intent of the sixty-first legislative assembly that of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, the state water commission provide funding for the following projects, for the biennium beginning July 1, 2009, and ending June 30, 2011:

Digital elevation mapping project	\$300,000
Enhancement of the local share of funding for the Renwick dam in Pembina County	\$100,000
Evaluate, in conjunction with state, local, and federal officials and entities,	\$500,000

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long-term flood control solutions in the Red River valley Michigan spillway in Nelson County	\$500,000
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**SECTION 10. LEGISLATIVE INTENT - NELSON COUNTY WATER RESOURCE DISTRICT.** It is the intent of the sixty-first legislative assembly that the state water commission assist the Nelson County water resource district by providing engineering and permitting services, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 11. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 21

### HOUSE BILL NO. 1021

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance; to authorize and provide an appropriation for additional full-time equivalent positions for workforce safety and insurance; and to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to providing a continuing appropriation for litigation expenses relating to employer and medical provider issues.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the workforce safety and insurance fund in the state treasury, not otherwise appropriated, to workforce safety and insurance, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total special funds	\$53,241,155	\$2,281,450	\$55,522,605
Full-time equivalent positions	237.14	0.00	237.14

**SECTION 2. WORKFORCE SAFETY AND INSURANCE FULL-TIME EQUIVALENT EMPLOYEE POSITIONS AUTHORIZATION - APPROPRIATION.** The director of workforce safety and insurance may hire, upon a determination that employees are needed to facilitate the economic and efficient administration of the entity's vocational rehabilitation program, up to ten full-time equivalent employee positions in addition to the full-time equivalent employee positions authorized in section 1 of this Act for the biennium beginning July 1, 2009, and ending June 30, 2011. There is appropriated out of any moneys in the workers' compensation fund, not otherwise appropriated, the sum of \$1,355,000, or so much of the sum as may be necessary, to workforce safety and insurance for the purpose of defraying the expenses of any additional full-time equivalent positions authorized under this section, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Litigation expenses - Continuing appropriation.** Money in the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with litigating employer-related issues arising under this title and for payment of organization expenses associated with litigating medical provider-related issues identified under sections 65-02-23 and 65-02-20.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 22

### HOUSE BILL NO. 1022

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies; to provide a transfer; to amend and reenact subsection 1 of section 15-39.1-09 of the North Dakota Century Code, relating to teachers' fund for retirement employer contributions; to provide for application; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

#### RETIREMENT AND INVESTMENT OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,334,909	\$339,171	\$2,674,080
Operating expenses	935,999	(11,429)	924,570
Contingencies	<u>82,000</u>	<u>0</u>	<u>82,000</u>
Total special funds	\$3,352,908	\$327,742	\$3,680,650
Full-time equivalent positions	17.00	0	17.00

##### Subdivision 2.

#### PUBLIC EMPLOYEES RETIREMENT SYSTEM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,746,283	\$490,206	\$4,236,489
Operating expenses	11,247,019	(9,587,020)	1,659,999
Contingencies	250,000	0	250,000
Total all funds	\$15,243,302	(\$9,096,814)	\$6,146,488
Less estimated income	<u>15,243,302</u>	<u>(9,109,814)</u>	<u>6,133,488</u>
Total general fund	\$0	\$13,000	\$13,000
Full-time equivalent positions	33.00	0	33.00

##### Subdivision 3.

#### BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$0	\$13,000	\$13,000
Grand total special funds	18,596,210	(8,757,072)	9,839,138
Grand total all funds	\$18,596,210	(\$8,744,072)	\$9,852,138
Full-time equivalent positions	50.00	0	50.00

**SECTION 2. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the respective boards, the retirement and investment office and the public employees retirement system may transfer from their respective contingencies line items in subdivisions 1 and 2 of section 1 of this Act to all other line items. The agencies shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 3. APPROPRIATION.** If Senate Bill No. 2277 is approved by the sixty-first legislative assembly and becomes effective, there is appropriated out of any moneys in the teachers' fund for retirement, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the retirement and investment office for the purpose of implementing Senate Bill No. 2277, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. AMENDMENT.** If Senate Bill No. 2277 is approved by the sixty-first legislative assembly and becomes effective, subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund eight and ~~twenty-five~~ <sup>seventy-five</sup> hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

**SECTION 5. APPLICATION.** Section 4 of this Act applies to salaries earned after June 30, 2010.

**SECTION 6. EFFECTIVE DATE.** Section 4 of this Act becomes effective on July 1, 2010.

**SECTION 7. EXPIRATION DATE.** Section 4 of this Act is effective until the ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement increases to ninety percent based upon the actuarial value of assets and expires on the July first that follows the first valuation that shows a ninety percent funded ratio. The board of trustees of the teachers' fund for retirement shall notify the legislative council of the expiration date of section 4 of this Act.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 23

### HOUSE BILL NO. 1023

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the general fund authority enacted by the sixtieth legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 2009, and ending June 30, 2009, as follows:

Subdivision 1.		
	OFFICE OF THE ATTORNEY GENERAL	
Litigation fees		\$20,000
Capital assets		340,000
Operating expenses		74,000
Total all funds		\$434,000
Less estimated income		340,000
Total general fund appropriation		\$94,000
Subdivision 2.		
	OFFICE OF THE ADJUTANT GENERAL	
Operating expenses		\$4,822,553
Total general fund appropriation		\$4,822,553
Subdivision 3.		
	UNIVERSITY OF NORTH DAKOTA	
1997 flood expenditures		\$2,858,771
Total general fund appropriation		\$2,858,771
Subdivision 4.		
	NORTH DAKOTA STATE UNIVERSITY	
2000 flood expenditures		\$527,842
Total general fund appropriation		\$527,842
Subdivision 5.		
	MAIN RESEARCH CENTER	
Main research center		\$100,499
Total general fund appropriation		\$100,499
Subdivision 6.		
	CENTRAL GRASSLANDS RESEARCH CENTER	
Central grasslands research center		\$13,560
Total general fund appropriation		\$13,560

## Subdivision 7.

NORTH CENTRAL RESEARCH CENTER	
North central research center	\$22,094
Total general fund appropriation	\$22,094
Grand total general fund appropriation	\$8,439,319
Grand total special funds	\$340,000
Grand total all funds	\$8,779,319

**SECTION 2. EXEMPTION.** The sum of \$3,422,553 contained in subdivision 2 of section 1 of this Act is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation are available during the biennium beginning July 1, 2009, and ending June 30, 2011, for the purpose of providing state matching funds for public assistance and disaster hazard mitigation.

**SECTION 3. UNSPENT APPROPRIATION AUTHORITY.** The appropriation in subdivision 2 of section 1 of this Act includes \$1,400,000 for expenses incurred for the snow emergency in January 2009. Any unexpended funds from this appropriation may not be spent for other purposes and the appropriation authority must be canceled at the end of the biennium ending June 30, 2009, in accordance with section 54-44.1-11.

**SECTION 4. UNSPENT APPROPRIATION AUTHORITY.** The appropriation in subdivision 3 of section 1 of this Act is for paying the final university of North Dakota expenses relating to the 1997 flood disaster. Notwithstanding any other provision of law, any unexpended funds from this appropriation may not be spent for other purposes and the appropriation authority must be canceled at the end of the biennium ending June 30, 2011, in accordance with section 54-44.1-11.

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

Approved April 15, 2009  
 Filed April 15, 2009

**CHAPTER 24****HOUSE BILL NO. 1231**

(Representatives Keiser, Kerzman, Weisz)  
(Senators Kilzer, Krauter, J. Lee)

AN ACT to provide an appropriation to the state department of health for a mobile dental care service grant.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$196,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing a grant to a nonprofit organization for establishing a mobile dental care service to provide dental treatment, prevention, and education services to low-income and underserved children in areas of the state with limited or unavailable dental services, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 25****HOUSE BILL NO. 1305**

(Representatives Skarphol, Rust)  
(Senator Andrist)

AN ACT to provide an appropriation to the state water commission for water project grants; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$2,792,000, or so much of the sum as may be necessary, to the state water commission for the purpose of providing a grant of up to \$864,000 to assist in the local cost-share of the Ray and Tioga water supply project, providing a grant of up to \$985,000 to assist in the local cost-share of the Burke, Divide, and Williams water district water supply project, providing a grant of up to \$593,000 to assist in the local cost-share of the Wildrose water supply project, and providing a grant of up to \$350,000 to assist in the repayment of outstanding bonds associated with the Stanley water pipeline construction project, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 4, 2009  
Filed May 5, 2009

**CHAPTER 26****HOUSE BILL NO. 1350**

(Representatives Keiser, Karls, Martinson)  
(Senators Kilzer, Krauter, Potter)

AN ACT to provide an appropriation to the department of commerce for a grant for construction of a great plains applied energy research center; and to provide for a report to the budget section.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing a grant for construction of a great plains applied energy research center on the Bismarck state college campus, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of commerce may spend the general fund appropriation only when the department certifies to the office of management and budget that:

1. Other nonstate matching funds of three dollars for each one dollar of grant funds are available for all costs of the center, a portion of which must be from the private sector;
2. The state will be a proportionate owner in the center based on the state's contribution percentage of all costs of the center;
3. The state will not be responsible for any future operational costs, including property tax, of the center; and
4. The center will be subject to local property tax assessments at the discretion of the local taxing authority.

**SECTION 2. REPORT TO THE BUDGET SECTION.** The department of commerce shall provide a report to the budget section at its first meeting after September 1, 2009, and at its first meeting after March 1, 2010, regarding the status of the construction of a great plains applied energy research center, including the extent to which nonstate matching funds have been made available for the project.

Approved April 23, 2009  
Filed April 23, 2009

**CHAPTER 27****HOUSE BILL NO. 1475**

(Representatives Uglem, Berg, R. Kelsch, Mueller)  
(Senators Hogue, Klein)

AN ACT providing an appropriation to the department of career and technical education for innovation grants.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of providing additional funding for innovation grants, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 8, 2009  
Filed April 9, 2009

CHAPTER 28

HOUSE BILL NO. 1481
(Representatives Carlson, Boucher)
(Senators Stenehjem, O'Connell)
(At the request of the Governor)

AN ACT providing an appropriation to the state historical society for a heritage center addition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$39,700,000, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income to the state historical society, the sum of \$12,000,000, or so much of the sum as may be necessary, to the state historical society for the purpose of a heritage center addition.

SECTION 2. CONSTRUCTION AUTHORIZATION. Section 1 of this Act includes \$51,700,000, of which \$39,700,000 is from the general fund and \$12,000,000 is from federal or special funds to be raised by the state historical society, for construction of an addition to the North Dakota heritage center. Construction may not begin until the historical society certifies to the office of management and budget that of the federal or special funds required to complete the project, cash or pledges with a discounted cash value of at least \$6,000,000 has been received by the state historical society.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY. The following amounts reflect the 2009-11 one-time funding items included in section 1 of this Act:

Table with 2 columns: One-Time Funding Description and 2009-11. Rows include Heritage center expansion, Total all funds, Total special funds, and Total general fund.

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The state historical society shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 4. PROJECT MANAGER - HERITAGE CENTER ADDITION PROJECT. The director of the facility management division of the office of management and budget shall serve as the project construction manager for the heritage center addition project for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 5. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS. The state historical society shall seek federal funds under the federal American Recovery and Reinvestment Act of 2009 for the heritage center expansion project. Any funds received are appropriated to the state historical society for the purpose of

defraying the expenses of the project. The state historical society may not spend the general fund moneys appropriated in section 1 of this Act to the extent that federal fiscal stimulus funds are received and spent for the project under this section.

Approved May 5, 2009  
Filed May 5, 2009

## CHAPTER 29

### SENATE BILL NO. 2001 (Appropriations Committee) (At the request of the Legislative Council)

AN ACT providing an appropriation for defraying the expenses of the legislative branch of state government; to provide for transfers; to create and enact a new subsection to section 54-03.1-03 and a new section to chapter 54-35 of the North Dakota Century Code, relating to the agenda of the organizational session and to a legislative budget committee; to amend and reenact subdivision c of subsection 7 of section 54-03-20, section 54-44.1-04, subsection 7 of section 54-44.1-06, and section 54-44.1-07 of the North Dakota Century Code, relating to legislative leaders' monthly compensation, budget requests, and drafts of appropriation bills; to provide for applications and transfers; to provide for a legislative council study; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from the insurance regulatory trust fund, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Subdivision 1.			
SIXTY-FIRST AND SIXTY-SECOND LEGISLATIVE ASSEMBLIES AND BIENNIUM			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,855,557	\$1,077,949	\$7,933,506
Operating expenses	2,648,431	294,130	2,942,561
Capital assets	206,000	794,000	1,000,000
National conference of state legislatures	206,314	21,346	227,660
Legislative applications replacement	0	3,910,827	3,910,827
<b>Total general fund</b>	<b>\$9,916,302</b>	<b>\$6,098,252</b>	<b>\$16,014,554</b>

Subdivision 2.			
LEGISLATIVE COUNCIL			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,802,975	\$1,073,394	\$6,876,369
Operating expenses	2,635,888	956,246	3,592,134
Capital assets	0	41,000	41,000
Prison facility study	250,000	(250,000)	0
<b>Total all funds</b>	<b>\$8,688,863</b>	<b>\$1,820,640</b>	<b>\$10,509,503</b>
Less estimated income	70,000	0	70,000
<b>Total general fund</b>	<b>\$8,618,863</b>	<b>\$1,820,640</b>	<b>\$10,439,503</b>

Full-time equivalent positions	33.00	1.00	34.00
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Subdivision 3.

**BILL TOTAL**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$18,535,165	\$7,918,892	\$26,454,057
Grand total special funds	<u>70,000</u>	<u>0</u>	<u>70,000</u>
Grand total all funds	\$18,605,165	\$7,918,892	\$26,524,057

**SECTION 2. LEGISLATIVE ASSEMBLY ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.**

The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation for the legislative assembly in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Legislative applications replacement system	\$3,910,827	\$3,910,827
Computer equipment replacement	350,000	92,500
Legislative wing equipment and improvements	0	1,000,000
Total general fund	\$4,260,827	\$5,003,327

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The legislative assembly shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LEGISLATIVE COUNCIL ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.**

The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation for the legislative council in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Computer equipment replacement	\$104,579	\$0
Office equipment replacement	25,000	20,000
State employee compensation study	0	100,000
Office improvements	0	50,000
Total general fund	\$129,579	\$170,000

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The legislative council shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the sixty-first and sixty-second legislative assemblies, upon request by the chairman of the legislative

council or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

**SECTION 5. LEGISLATIVE WING EQUIPMENT AND IMPROVEMENT FUNDING - EXPENDITURE DETERMINATION.** Any expenditure of funds relating to the sum of \$400,000 of the \$1,000,000 provided for legislative wing equipment and improvements in subdivision 1 of section 1 of this Act must be approved by a majority of the senate members of the legislative management committee, or its successor. Any expenditures relating to a separate sum of \$400,000 of the \$1,000,000 for legislative wing equipment and improvements must be approved by a majority of the house of representatives members of the legislative management committee, or its successor, and any expenditures relating to the remaining \$200,000 must be approved by a majority of all members of this committee, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. APPLICATION AND TRANSFER AUTHORITY.** North Dakota Century Code sections 54-16-04 and 54-44.1-11 do not apply to chapter 1 of the 2007 Session Laws. The director of the office of management and budget and the state treasurer shall make transfers of funds between the line items and the agencies of the legislative branch within section 1 of that chapter as requested by the chairman of the legislative council or the chairman's designee.

**SECTION 7. LEGISLATIVE COUNCIL STUDY - STATE EMPLOYEE COMPENSATION.** During the 2009-10 interim, the legislative council shall consider studying the classified state employee compensation system, including a review of the development and determination of pay grades and classifications. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 8. ADDITIONAL LODGING REIMBURSEMENT FOR 2009 LEGISLATIVE ASSEMBLY.** Notwithstanding the per calendar month lodging maximum provided in section 54-03-20 for members of the legislative assembly during a legislative session, a member of the sixty-first legislative assembly is entitled to lodging reimbursement as provided in section 44-08-04 for state officers and employees for each calendar day the sixty-first legislative assembly is in session during the month of April 2009 if the member submits a voucher indicating the actual amount expended for lodging during the month of April.

<sup>9</sup> **SECTION 9. AMENDMENT.** Subdivision c of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in

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<sup>9</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

addition to any other compensation or expense reimbursement provided by law, the sum of two hundred ~~seventy eighty-four~~ dollars per month during the biennium for their execution of public duties.

<sup>10</sup> **SECTION 10. AMENDMENT.** Subdivision c of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred ~~seventy ninety-eight~~ dollars per month during the biennium for their execution of public duties.

\* **SECTION 11.** A new subsection to section 54-03.1-03 of the North Dakota Century Code is created and enacted as follows:

Presentation of the report of the legislative budget committee as provided in section 12 of this Act;

\* **SECTION 12.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Legislative budget committee - Creation - Duties.** The legislative council, during each biennium, shall appoint a legislative budget committee consisting of sixteen members, eight of whom must be appointed by the majority leader of the senate and eight of whom must be appointed by the majority leader of the house of representatives. The committee shall coordinate and direct activities involved in the development of budget recommendations to assist the legislative assembly as the legislative assembly develops policy and provides appropriations for the operations of state government. The legislative budget committee, with the assistance of the legislative budget analyst and auditor:

1. Shall develop recommendations for the office of management and budget to consider including in its forms and guidelines for agencies to use in preparing budget requests;
2. Shall review, analyze, and evaluate budgets, budget requests, programs, and activities of state agencies, institutions, and departments;
3. Shall prepare drafts of appropriations acts for the next biennium providing funding at the same base level approved by the most recently adjourned special or regular session of the legislative assembly;

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<sup>10</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

4. May meet up to four times between November tenth of each even-numbered year and the organizational session of the legislative assembly to develop budget-related recommendations pertaining to the state budget or any portion of that budget, including revenues and appropriations to assist the legislative assembly as the legislative assembly develops policy and provides appropriations for the operations of state government. The committee may prepare draft amendments for consideration by the legislative assembly necessary to implement budget-related recommendations of the committee; and
5. Shall prepare a report for presentation on the first day of organizational session.

\* **SECTION 13. AMENDMENT.** Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**(Effective after June 30, 2009) Budget estimates of budget units filed with the office of the budget and the legislative council - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget and the legislative council, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget considering recommendations of the legislative council, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget, subject to approval by the legislative council, may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

\* **SECTION 14. AMENDMENT.** Subsection 7 of section 54-44.1-06 of the North Dakota Century Code, as effective after June 30, 2009, is amended and reenacted as follows:

7. Drafts of a proposed amendment to a general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.

\* **SECTION 15. AMENDMENT.** Section 54-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-07. Presentation of budget data - How presented to the legislative assembly.** The director of the budget or the director's designee shall

present the budget data information in section 54-44.1-06, except the drafts of ~~acts~~ amendments required by subsection 7 of that section, and make available sufficient copies thereof to the legislative assembly at the organizational session. The drafts of ~~acts~~ amendments required by subsection 7 of section 54-44.1-06 must be submitted to the legislative council within seven days after the day of adjournment of the organizational session. The budget data must be completed and made available to the legislative assembly in such form as may be prescribed by the legislative council. The legislative council shall set the time and place at which such budget data is to be presented.

**SECTION 16. EFFECTIVE DATE.** Section 9 of this Act becomes effective on July 1, 2009, and section 10 of this Act becomes effective on July 1, 2010.

Approved May 11, 2009  
Filed May 11, 2009

\* Sections 11 through 15 of Senate Bill No. 2001 were vetoed, see chapter 633.

## CHAPTER 30

### SENATE BILL NO. 2002 (Appropriations Committee) (At the request of the Supreme Court)

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; and to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of supreme and district court judges.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

#### Subdivision 1.

##### SUPREME COURT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,071,605	\$1,118,391	\$8,189,996
Operating expenses	2,149,185	48,191	2,197,376
Capital assets	96,000	(83,451)	12,549
Judges retirement	<u>122,231</u>	<u>4,790</u>	<u>127,021</u>
Total general fund	\$9,439,021	\$1,087,921	\$10,526,942

#### Subdivision 2.

##### DISTRICT COURTS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$42,102,619	\$6,027,542	\$48,130,161
Operating expenses	13,144,681	7,416,641	20,561,322
Capital assets	458,583	1,843,350	2,301,933
Judges retirement	605,749	(72,044)	533,705
UND central legal research	80,000	0	80,000
Alternative dispute resolution	20,000	0	20,000
Mediation	<u>1,076,824</u>	<u>(284,788)</u>	<u>792,036</u>
Total all funds	\$57,488,456	\$14,930,701	\$72,419,157
Less estimated income	<u>1,900,591</u>	<u>(170,130)</u>	<u>1,730,461</u>
Total general fund	\$55,587,865	\$15,100,831	\$70,688,696

#### Subdivision 3.

##### JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Judicial conduct commission and disciplinary board	\$717,291	\$96,338	\$813,629
Total all funds	<u>\$717,291</u>	<u>\$96,338</u>	<u>\$813,629</u>

Less estimated income	299,049	15,297	314,346
Total general fund	\$418,242	\$81,041	\$499,283

## Subdivision 4.

## BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$65,445,128	\$16,269,793	\$81,714,921
Grand total special funds	2,199,640	(154,833)	2,044,807
Grand total all funds	\$67,644,768	\$16,114,960	\$83,759,728
Full-time equivalent positions	338.0	4.00	342.0

**SECTION 2. APPROPRIATION.** There are appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. TRANSFERS.** The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires the transfers to carry on properly the functions of the judicial branch of government.

**SECTION 4. AMENDMENT.** Section 27-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02-02. Salaries of justices of supreme court.** The annual salary of each justice of the supreme court is one hundred ~~thirteen~~ twenty-four thousand ~~five hundred seventy-eight~~ twenty-seven dollars through June 30, ~~2008~~ 2010, and one hundred ~~eighteen~~ thirty thousand ~~one~~ two hundred ~~twenty-one~~ twenty-eight dollars thereafter. The chief justice of the supreme court is entitled to receive an additional three thousand ~~two~~ five hundred sixty-two dollars per annum through June 30, ~~2008~~ 2010, and three thousand ~~three~~ seven hundred ~~ninety-two~~ forty dollars per annum thereafter.

**SECTION 5. AMENDMENT.** Section 27-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-05-03. Salaries and expenses of district judges.** The annual salary of each district judge is one hundred ~~four~~ thirteen thousand ~~seventy-three~~ six hundred ~~forty-eight~~ eight dollars through June 30, ~~2008~~ 2010, and one hundred ~~eight~~ nineteen thousand ~~two~~ three hundred ~~thirty-six~~ thirty dollars thereafter. Each district judge is entitled to travel expenses, including mileage and subsistence while engaged in the discharge of official duties outside the city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional three thousand ~~five~~ two hundred ~~eighty-two~~ eighty-two dollars per annum through June 30, ~~2008~~ 2010, and three thousand ~~one~~ four hundred ~~twenty-six~~ forty-seven dollars thereafter.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for

the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Unified case management system replacement project	\$1,375,000	\$7,258,129
Parenting coordinator training	0	52,040
Management reserve fund	0	600,000
Enhanced records management system	115,750	0
Office equipment and furniture	0	288,124
Information technology equipment	0	<u>109,088</u>
Total general fund	\$1,490,750	\$8,307,381

The 2009-11 one-time funding amounts are not a part of the agency's base budget for the 2011-13 biennium. The supreme court shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009  
 Filed May 4, 2009

## CHAPTER 31

### SENATE BILL NO. 2003

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide a contingent appropriation; to provide for transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide for legislative council studies; to create and enact a new section to chapter 15-62.2 of the North Dakota Century Code, relating to reporting requirements of scholarship programs; to amend and reenact subsections 1 and 3 of section 15-10-37 and sections 15-62.2-02 and 15.1-01-02 of the North Dakota Century Code, relating to student financial assistance grants, technology grants, and joint meetings of the state's education boards; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota university system office and to the various entities and institutions under the supervision of the state board of higher education for the purpose of defraying the expenses of the North Dakota university system office and to the various entities for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

##### NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets	\$15,754,112	(\$3,740,064)	\$12,014,048
Competitive research program	5,650,000	1,400,000	7,050,000
System governance	6,281,894	903,718	7,185,612
Title II	695,600	0	695,600
System information technology services	25,983,293	4,246,745	30,230,038
Professional liability insurance	1,100,000	0	1,100,000
Student financial assistance grants	5,987,497	13,386,525	19,374,022
Professional student exchange program	2,722,946	614,154	3,337,100
Academic and technical education scholarships	0	3,000,000	3,000,000
Two-year campus marketing	0	800,000	800,000
Scholars program	1,478,566	635,018	2,113,584
Native American scholarships	380,626	666	381,292
Security and emergency	0	750,000	750,000

preparedness			
Education incentive programs	1,740,314	1,436,030	3,176,344
Science, technology, engineering, and mathematics teacher education enhancement	0	1,500,000	1,500,000
Grants	700,000	(600,000)	100,000
Total all funds	\$68,474,848	\$24,332,792	\$92,807,640
Less estimated income	3,343,730	705,228	4,048,958
Total general fund	\$65,131,118	\$23,627,564	\$88,758,682
Full-time equivalent positions	20.00	1.30	21.30

## Subdivision 2.

## BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$19,733,680	\$4,470,325	\$24,204,005
Capital assets	243,481	3,409,500	3,652,981
Deferred maintenance	0	340,637	340,637
Total all funds	\$19,977,161	\$8,220,462	\$28,197,623
Less estimated income	0	409,500	409,500
Total general fund	\$19,977,161	\$7,810,962	\$27,788,123
Full-time equivalent positions	105.38	5.55	110.93

## Subdivision 3.

## LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$6,511,348	\$1,444,862	\$7,956,210
Capital assets	43,662	2,609,920	2,653,582
Deferred maintenance	0	93,807	93,807
Total all funds	\$6,555,010	\$4,148,589	\$10,703,599
Less estimated income	0	0	0
Total general fund	\$6,555,010	\$4,148,589	\$10,703,599
Full-time equivalent positions	30.49	2.48	32.97

## Subdivision 4.

## WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$6,422,504	\$1,274,495	\$7,696,999
Capital assets	86,475	16,985,000	17,071,475
Deferred maintenance	0	382,002	382,002
Total all funds	\$6,508,979	\$18,641,497	\$25,150,476
Less estimated income	0	15,375,000	15,375,000
Total general fund	\$6,508,979	\$3,266,497	\$9,775,476
Full-time equivalent positions	39.80	1.30	41.10

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$107,011,830	\$18,024,953	\$125,036,783
Capital assets	2,300,545	49,919,000	52,219,545
Deferred maintenance	0	7,178,674	7,178,674
Total all funds	\$109,312,375	\$75,122,627	\$184,435,002
Less estimated income	0	49,919,000	49,919,000

Total general fund	\$109,312,375	\$25,203,627	\$134,516,002
Full-time equivalent positions	637.24	(11.96)	625.28

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$89,593,630	\$18,773,992	\$108,367,622
Capital assets	1,692,225	71,100,000	72,792,225
Deferred maintenance	0	5,355,817	5,355,817
Total all funds	\$91,285,855	\$95,229,809	\$186,515,664
Less estimated income	0	58,100,000	58,100,000
Total general fund	\$91,285,855	\$37,129,809	\$128,415,664
Full-time equivalent positions	498.12	17.64	515.76

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$27,390,368	\$4,216,787	\$31,607,155
Capital assets	753,332	12,836,000	13,589,332
Deferred maintenance	0	1,034,143	1,034,143
Total all funds	\$28,143,700	\$18,086,930	\$46,230,630
Less estimated income	0	7,136,000	7,136,000
Total general fund	\$28,143,700	\$10,950,930	\$39,094,630
Full-time equivalent positions	156.77	0.47	157.24

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$16,856,110	\$4,367,627	\$21,223,737
Capital assets	383,690	2,000,000	2,383,690
Deferred maintenance	0	1,662,172	1,662,172
Total all funds	\$17,239,800	\$8,029,799	\$25,269,599
Less estimated income	0	350,000	350,000
Total general fund	\$17,239,800	\$7,679,799	\$24,919,599
Full-time equivalent positions	121.60	(30.50)	91.10

## Subdivision 9.

## MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$10,115,065	\$1,514,551	\$11,629,616
Capital assets	208,994	8,626,825	8,835,819
Deferred maintenance	0	1,910,120	1,910,120
Total all funds	\$10,324,059	\$12,051,496	\$22,375,555
Less estimated income	0	3,668,500	3,668,500
Total general fund	\$10,324,059	\$8,382,996	\$18,707,055
Full-time equivalent positions	55.89	(.50)	55.39

## Subdivision 10.

## MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$30,095,122	\$4,528,585	\$34,623,707
Capital assets	596,870	26,000,000	26,596,870
Deferred maintenance	0	595,111	595,111
Total all funds	\$30,691,992	\$31,123,696	\$61,815,688
Less estimated income	0	22,250,000	22,250,000
Total general fund	\$30,691,992	\$8,873,696	\$39,565,688
Full-time equivalent positions	184.83	4.99	189.82

## Subdivision 11.

## VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$13,350,137	\$3,017,864	\$16,368,001
Capital assets	258,416	19,500,000	19,758,416
Deferred maintenance	0	1,304,921	1,304,921
Total all funds	\$13,608,553	\$23,822,785	\$37,431,338
Less estimated income	0	18,500,000	18,500,000
Total general fund	\$13,608,553	\$5,322,785	\$18,931,338
Full-time equivalent positions	78.15	8.71	86.86

## Subdivision 12.

## MINOT STATE UNIVERSITY - BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$4,759,548	\$1,102,824	\$5,862,372
Capital assets	109,725	3,080,000	3,189,725
Deferred maintenance	0	97,021	97,021
Total all funds	\$4,869,273	\$4,279,845	\$9,149,118
Less estimated income	0	2,000,000	2,000,000
Total general fund	\$4,869,273	\$2,279,845	\$7,149,118
Full-time equivalent positions	31.11	0.64	31.75

## Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE  
AND HEALTH SCIENCES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,027,701	\$7,087,700	\$41,115,401
Total all funds	\$34,027,701	\$7,087,700	\$41,115,401
Less estimated income	0	0	0
Total general fund	\$34,027,701	\$7,087,700	\$41,115,401
Full-time equivalent positions	157.74	(12.82)	144.92

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$3,352,828	\$1,118,212	\$4,471,040
Capital assets	36,638	300,000	336,638
Deferred maintenance	0	45,576	45,576
Total all funds	\$3,389,466	\$1,463,788	\$4,853,254
Less estimated income	997,486	0	997,486

Total general fund	\$2,391,980	\$1,463,788	\$3,855,768
Full-time equivalent positions	19.47	7.53	27.00

Subdivision 15.

**BILL TOTAL**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$440,067,556	\$153,228,587	\$593,296,143
Grand total special funds	4,341,216	197,223,148	201,564,364
Grand total all funds	\$444,408,772	\$350,451,735	\$794,860,507

**SECTION 2. CONTINGENT FUNDING - LAKE REGION STATE COLLEGE.**

The capital assets line item in subdivision 3 of section 1 of this Act includes \$2,609,920 from the general fund for a wind energy project at lake region state college which may be spent only to the extent that federal funds appropriated in section 3 of this Act are not available for these purposes. Notwithstanding provisions of section 54-44.1-11 which authorize the North Dakota university system to continue appropriation authority, any unspent funds from the general fund appropriation provided for the lake region state college wind energy project must be returned to the general fund at the end of the 2009-11 biennium.

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.**

The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the North Dakota university system, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Lake region state college - Wind energy project	\$2,609,920
Total federal funds	\$2,609,920

The North Dakota university system may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated under this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. APPROPRIATION - FEDERAL FISCAL STABILIZATION - OTHER GOVERNMENT SERVICES FUNDS - ADDITIONAL FUNDING APPROVAL - PRIORITY.**

The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the North Dakota university system, for the period beginning with the effective date of this Act and ending June 30, 2011, for the following capital construction project:

Minot state university Swain hall	\$5,000,000
University of North Dakota education building	11,200,000
Total federal funds	\$16,200,000

The North Dakota university system may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated under this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available. If the sum of federal fiscal stabilization - other government services funds appropriated by the sixty-first legislative assembly exceed funds available, the governor shall give priority for using the funds available for the Minot state university Swain hall project and the university of North Dakota education building project.

**SECTION 5. ESTIMATED INCOME - PERMANENT OIL TAX TRUST FUND - WILLISTON STATE COLLEGE.** The estimated income line item in subdivision 4 of section 1 of this Act includes \$5,000,000 from the permanent oil tax trust fund for the Williston state college virtual center for career and technical education. Williston state college may only use the funding provided from the permanent oil tax trust fund for the purpose of constructing a virtual center for career and technical education to provide secondary and postsecondary career and technical education programs.

**SECTION 6. CONTINGENT APPROPRIATION - DICKINSON STATE UNIVERSITY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$8,800,000, or so much of the sum as may be necessary, to Dickinson state university for the purpose of the renovation and construction of the Dickinson state university Stoxen library, for the biennium beginning July 1, 2009, and ending June 30, 2011. Dickinson state university may spend this funding only if actual general fund revenues for the period from July 1, 2009, through December 31, 2009, exceed estimated general fund revenues for that period by at least \$25,000,000, as determined by the office of management and budget, based on the legislative estimates made at the close of the 2009 legislative session.

**SECTION 7. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Northern tier network infrastructure from permanent oil tax fund	\$2,773,800	\$0
ConnectND system support	2,300,000	0
Common information system pool parity funding	420,000	0
Campus initiatives	960,800	0
UND simulation lab	200,000	0
Williston state college oil rig program	200,000	0
Deferred maintenance - General fund	10,893,033	20,000,000
Capital projects - General fund	13,808,235	39,008,248
Capital projects - Special funds	153,295,170	166,958,000
Capital projects from permanent oil tax trust fund	4,809,515	10,400,000
Electronic medical records system UND	0	225,000

medical school		
Total all funds	\$189,660,553	\$236,591,248
Total special funds	161,078,485	177,358,000
Total general fund	\$28,582,068	\$59,233,248

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The North Dakota university system shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. PERMANENT OIL TAX TRUST FUND - DICKINSON STATE UNIVERSITY.** The estimated income line item in subdivision 8 of section 1 of this Act includes \$350,000 from the permanent oil tax trust fund for operations of Dickinson state university, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. PERMANENT OIL TAX TRUST FUND - BISMARCK FAMILY PRACTICE CENTER.** The estimated income line item in subdivision 5 of section 1 of this Act includes \$5,400,000 from the permanent oil tax trust fund for the construction of a building for the university of North Dakota school of medicine and health sciences Bismarck family practice center, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. CAPITAL ASSETS.** The sum of \$12,014,048, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 1 of this Act, must be used by the state board of higher education to satisfy outstanding bond obligations.

**SECTION 11. CAPITAL ASSETS - VALLEY CITY STATE UNIVERSITY.** The sum of \$1,000,000, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 11 of section 1 of this Act, may be used for development of a campuswide master plan and for maintenance and repair projects.

**SECTION 12. CAPITAL ASSETS - DICKINSON STATE UNIVERSITY.** The sum of \$2,000,000, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 8 of section 1 of this Act, may be used for development of a campuswide master plan, an asbestos survey and removal and schematic design for Stoxen library, other campus repairs, and payoff of energy or construction loans.

**SECTION 13. SYSTEM INFORMATION TECHNOLOGY SERVICES.** The sum of \$30,230,038, or so much of the sum as may be necessary, included in the system information technology services line item in subdivision 1 of section 1 of this Act, must be used for the benefit of the institutions and entities under the control of the state board of higher education, as determined by the board. Funding allocations are to be made based on the North Dakota university system information technology plan and technology priorities. Funds allocated pursuant to this section must be used to support the system information technology services including the higher education computer network, the interactive video network, the on-line Dakota information network, ConnectND, and other related technology initiatives as determined by the board.

**SECTION 14. NORTH DAKOTA FOREST SERVICE FEDERAL FUNDS.** The sum of \$826,284 in section 1, subdivision 14, of this Act is available on a dollar-for-dollar basis to offset lost federal funds.

**SECTION 15. STUDENT LOAN TRUST FUND.** Subdivision 1 of section 1 of this Act includes the sum of \$2,011,570, or so much of the sum as may be necessary, from the student loan trust fund of which \$990,970 is for the professional student exchange program and \$1,020,600 ConnectND campus solution positions, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 16. FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION.** All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources, including funding received through the federal American Recovery and Reinvestment Act of 2009 for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, received by the institutions and entities under the control of the state board of higher education are appropriated to those institutions and entities, for the biennium beginning July 1, 2009, and ending June 30, 2011. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2009, and ending June 30, 2011, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

**SECTION 17. TRANSFER AUTHORITY.** If, during the biennium beginning July 1, 2009, and ending June 30, 2011, the state board of higher education determines that funds allocated to operations in section 1 of this Act are needed for capital assets or deferred maintenance, the board may transfer funds from operations to capital assets or to deferred maintenance. The board shall report any transfer of funds under this section to the office of management and budget.

**SECTION 18. DEFERRED MAINTENANCE - TRANSFERS.** If, during the biennium beginning July 1, 2009, and ending June 30, 2011, the state board of higher education determines that funds allocated to deferred maintenance in section 1 of this Act are needed for capital assets, the board may transfer funds from deferred maintenance to capital assets or may transfer funds from capital assets to deferred maintenance. The board shall report any transfer of funds under this section to the office of management and budget.

**SECTION 19. SECURITY AND EMERGENCY PREPAREDNESS TRANSFERS.** The sum of \$750,000, or so much of the sum as may be necessary, included in the security and emergency preparedness line item in subdivision 1 of section 1 of this Act, must be used for the benefit of the institutions and entities under the control of the state board of higher education, as determined by the board for security and emergency preparedness needs.

**SECTION 20. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** Notwithstanding any other provisions of law, the state board of higher education may adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control. The university system shall report any adjustments to the office of management and budget before the submission of the 2011-13 biennium budget request.

**SECTION 21. EDUCATION INCENTIVE PROGRAMS.** The funding appropriated for education incentive programs in subdivision 1 of section 1 of this Act may be allocated to education incentive programs as determined by the state board of higher education, including the reduction or elimination of specific programs, and the state board of higher education may determine the appropriate number of years of program eligibility for each education incentive program.

**SECTION 22. CAPITAL ASSETS - MINOT STATE UNIVERSITY - GEOTHERMAL SYSTEM.** The sum of \$2,500,000, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 10 of section 1 of this Act, may be used to refurbish the existing coal boiler or in combination with or to match federal or other funds to design and install a geothermal energy system, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 23. CAPITAL ASSETS - MINOT STATE UNIVERSITY SWAIN HALL.** The sum of \$1,250,000, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 10 of section 1 of this Act, may be used for the Minot state university Swain hall renovation project, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 24. OPERATING EXPENSES - VALLEY CITY STATE UNIVERSITY.** The sum of \$800,000, or so much of the sum as may be necessary, included in the operations line item in subdivision 11 of section 1 of this Act, may be used in support of strategic goals and initiatives, to offset enrollment impacts, and address other needs, including capital, as determined by Valley City state university.

**SECTION 25. USE OF UNSPENT 2007-09 GENERAL FUND APPROPRIATIONS - CAMPUS MARKETING.** The state board of higher education shall use \$200,000 of the North Dakota university system office unspent 2007-09 general fund appropriation authorized to continue under section 54-44.1-11 for marketing and student retention at Valley City state university, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 26. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION.** The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this Act and ending June 30, 2011. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated, for the biennium beginning July 1, 2009, and ending June 30, 2011, for the purpose of financing the following capital projects:

Williston state college - New dormitory	\$9,375,000
North Dakota state university - West dining services renovation and addition and auxiliary services renovation	7,000,000
North Dakota state university - Niskanen student apartments	20,000,000
North Dakota state school of science - Robertson hall renovation and addition and auxiliary services renovation	6,000,000
North Dakota state school of science - Parking lot	1,136,000
Mayville state university - Agassiz hall housing renovation	3,668,500
Minot state university - Wellness center	10,000,000
University of North Dakota - Hangar renovation and addition	1,500,000
Valley City state university - Snoeyenbos hall renovation	<u>3,500,000</u>
Total special funds	\$62,179,500

**SECTION 27. LEGISLATIVE INTENT - NORTH DAKOTA UNIVERSITY SYSTEM EMPLOYEE COMPENSATION ADJUSTMENTS.** It is the intent of the sixty-first legislative assembly that each North Dakota university system employee

whose documented performance meets all standards is to receive a minimum monthly salary increase of \$100 on July 1, 2009, and \$100 on July 1, 2010.

**SECTION 28. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS TEACHER EDUCATION ENHANCEMENT.** The sum of \$1,500,000 included in the science, technology, engineering, and mathematics teacher education line item in subdivision 1 of section 1 of this Act must be used for the benefit of institutions under the control of the state board of higher education, as determined by the board. Funding allocations are to be used to enhance the use of science, technology, engineering, and mathematics in existing teacher education program curriculums and may not be used for infrastructure projects.

**SECTION 29. LEGISLATIVE INTENT - LOAN FORGIVENESS PROGRAM.** It is the intent of the sixty-first legislative assembly that any qualified returning technology occupation loan forgiveness program applicants for the 2009-10 academic year and forward be eligible to receive \$1,500 per year, for up to four years, combined between the technology occupation loan forgiveness program and science, technology, engineering, and mathematics loan forgiveness program. All new applicants beginning with the 2009-10 academic year are eligible to receive \$1,500 per year, up to a maximum of \$6,000. It is also the intent of the sixty-first legislative assembly that the North Dakota university system make new and continuing loan forgiveness program awards in the 2009-11 biennium to ensure adequate program funding carryover to the 2011-13 biennium to continue the program with approximately the same number of new awards in the 2011-13 biennium without increased state program funding.

**SECTION 30. TUITION RATE INCREASES - LIMIT - BUDGET SECTION APPROVAL.** Notwithstanding any other provision of law, the state board of higher education shall limit any annual tuition increase for students attending institutions under its control for the 2009-10 and 2010-11 academic years to not more than four percent for each year unless the board receives prior budget section approval.

**SECTION 31. LEGISLATIVE COUNCIL STUDY - COMPLETION-BASED FUNDING.** During the 2009-10 interim, the legislative council shall consider studying options for funding higher education institutions. The study, if conducted, must include a review of the feasibility of implementing a higher education funding mechanism based on student completion rates. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 32. LEGISLATIVE COUNCIL STUDY - TUITION WAIVERS.** During the 2009-10 interim, the legislative council shall consider studying the impact of tuition waivers on institutions under the control of the state board of higher education. The study if conducted must review the types of tuition waivers available, the number of tuition waivers granted, and the value of tuition waivers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 33. LEGISLATIVE COUNCIL STUDY - EDUCATION GOVERNANCE.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of creating a department to oversee early childhood, elementary, secondary, and postsecondary education. The study if conducted must include a review of education governance in other states, the efficiency of combining governing agencies, and the potential governing structure of a combined education department. The legislative council shall report its findings

and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION STUDENT TRUST FUND.** During the 2009-10 interim, the legislative council shall consider studying the establishment of a higher education student trust fund, including available funding sources. The study if conducted must review best practices to include demonstrated in-migration patterns and long-term return on investment to the citizens of North Dakota by ensuring students are prepared to meet the changing needs of a global economy and to strengthen the economy of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. AMENDMENT.** Subsections 1 and 3 of section 15-10-37 of the North Dakota Century Code are amended and reenacted as follows:

1. The state board of higher education shall administer a science, technology, engineering, and mathematics occupations student loan program that encourages college students to pursue ~~technology-based~~ studies in these fields, to participate in technology internship programs, and to remain in the state after graduation. The board shall adopt rules to implement the program, including internship requirements, guidelines to determine which technology-related courses of study are eligible under the program, and standards for eligibility.
3. The state board of higher education shall distribute student loan grants directly to the Bank of North Dakota to repay outstanding student loan principal balances for eligible applicants. The maximum student loan grant amount for which an applicant may qualify is one thousand five hundred dollars per year and a total of ~~five~~ six thousand dollars, or a lesser amount established by rule adopted by the state board of higher education.

**SECTION 36. AMENDMENT.** Section 15-62.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-02. State board of higher education - Powers and duties.** The state board of higher education shall:

1. Administer the North Dakota student financial assistance program and the North Dakota scholars program and adopt functional rules regarding the eligibility and selection of grant and scholarship recipients.
2. Determine the amount of individual grants, ~~but which may not to~~ but which may not exceed one thousand five hundred dollars per recipient per academic year, under the North Dakota student financial assistance program.
3. ~~Adopt for~~ For the North Dakota student financial assistance program, adopt ~~criteria~~ criteria for substantial need, based upon the ability of the parents or guardian to contribute toward the applicant's educational expenses.
4. Establish the appropriate procedures for fiscal control, fund accounting, and necessary reports.

5. Apply for, receive, expend, and administer granted moneys from federal or private sources.

**SECTION 37.** A new section to chapter 15-62.2 of the North Dakota Century Code is created and enacted as follows:

**Annual report.** The state board of higher education shall provide to the legislative council an annual report regarding the number of North Dakota academic scholarships and career and technical education scholarships provided and demographic information pertaining to the recipients.

**SECTION 38. AMENDMENT.** Section 15.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-01-02. Joint meetings - State board of public school education - State board of higher education - Education standards and practices board - State board for career and technical education.** The state board of public school education, the state board of higher education, the education standards and practices board, and the state board for career and technical education shall meet together at least once each year at the call of the superintendent of public instruction, the commissioner of higher education, the executive director of the education standards and practices board, and the director of career and technical education for the purposes of:

1. Coordinating elementary and secondary education programs, career and technical education programs, and higher education programs;
2. Establishing high standards and expectations of students at all levels of the education continuum;
3. Ensuring that all students have access to challenging curricula;
4. Ensuring that the individuals instructing students at all levels of the education continuum are highly qualified and capable;
5. Cooperating in the provision of professional growth and development opportunities for ~~elementary and secondary teachers and administrators~~ individuals instructing students at all levels of the education continuum; and
6. Ensuring cooperation in any other jointly beneficial project or program.

**SECTION 39. UNIVERSITY OF NORTH DAKOTA HANGAR PROJECT.** The state board of higher education may enter an agreement with a private entity to do all things necessary and proper to authorize construction of a hangar addition and renovation at the university of North Dakota aerospace complex at the Grand Forks international airport using current fees for flight operations, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 40. EMERGENCY.** The capital assets, deferred maintenance, and education incentive line items and \$317,000 of the operations line item in subdivision 11 contained in section 1 of this Act and sections 3, 4, 11, 12, 14, 21, 26, and 36 of this Act are declared to be an emergency measure.

## CHAPTER 32

### SENATE BILL NO. 2004

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to provide for a grant from the state water commission; to provide legislative intent; to provide for a legislative council study; to provide for an exemption; to provide for a report to the legislative council; to provide for a contingent transfer; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of health for the purpose of defraying the expenses of the state department of health, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$37,709,131	\$7,152,737	\$44,861,868
Operating expenses	44,036,539	599,255	44,635,794
Capital assets	1,817,383	(4,115)	1,813,268
Grants	58,017,776	2,396,934	60,414,710
Tobacco prevention	8,919,346	160,339	9,079,685
WIC food payments	<u>17,550,000</u>	<u>7,513,375</u>	<u>25,063,375</u>
Total all funds	\$168,050,175	\$17,818,525	\$185,868,700
Less estimated income	150,595,277	13,946,429	164,541,706
Total general fund	<u>\$17,454,898</u>	<u>\$3,872,096</u>	<u>\$21,326,994</u>
Full-time equivalent positions	331.50	12.00	343.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Antiviral stockpile	\$2,010,135	\$0
Vaccines to public health	2,000,000	0
Legend prescription health	22,000	0
Emergency medical services assessment	<u>30,000</u>	<u>0</u>
Total general fund	\$4,062,135	\$0

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the state department of health, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Water quality grants	\$194,300
Superfund arsenic trioxide project grants	7,000,000
Clean diesel grants (provided to the department of public instruction)	1,730,000
Clean water state revolving loan fund administration	769,564
Drinking water state revolving loan fund administration	780,000
Stop violence against women	511,661
Women, infants, and children	<u>61,800</u>
Total federal funds	\$11,047,325

The state department of health may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. CONTINGENT APPROPRIATION - TRANSFER - COMMUNITY HEALTH TRUST FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,405,371, or so much of the sum as may be necessary, which the office of management and budget shall transfer to the community health trust fund if moneys in the community health trust fund are not sufficient to provide for legislative appropriations, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item included in section 1 of this Act includes \$272,310, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund, for the biennium beginning July 1, 2009, and ending June 30, 2011. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 6. EMERGENCY MEDICAL SERVICES OPERATIONS - FUNDING FROM INSURANCE TAX DISTRIBUTION FUND - REPORT TO LEGISLATIVE COUNCIL.** The estimated income line item in section 1 of this Act includes \$2,750,000 from the insurance tax distribution fund for the biennium beginning July 1, 2009, and ending June 30, 2011. Of this amount, \$2,250,000 is for grants to emergency medical services operations as provided in chapter 23-40 and \$500,000 is for a grant to contract with an organization to:

- Develop, implement, and provide an access critical ambulance service operations assessment process for the purpose of improving emergency medical services delivery;
- Develop, implement, and provide leadership development training;
- Develop, implement, and provide a biennial emergency medical services recruitment drive; and

- Provide regional assistance to ambulance services to develop a quality review process for emergency medical services personnel and a mechanism to report to medical directors.

The state department of health shall report to the legislative council on the use of the funding provided under this section. The department shall require recipients of grants under this section to provide information on the use of funds received as necessary to provide the report to the legislative council.

**SECTION 7. FEDERAL 319 NONPOINT PROGRAM MATCHING FUNDS - STATE WATER COMMISSION GRANT TO THE STATE DEPARTMENT OF HEALTH.** The state water commission shall provide a grant of \$200,000 from its 2009-11 biennium appropriation approved by the sixty-first legislative assembly to the state department of health to be used as matching funds for the federal 319 nonpoint program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. INTENT - INDIRECT COST RECOVERIES.** Notwithstanding section 54-44.1-14, the state department of health may deposit indirect cost recoveries in its operating account.

**SECTION 9. EXEMPTION.** The \$200,000, of which \$150,000 is from the community health trust fund and \$50,000 is from the general fund, appropriated for colorectal screening grants, as contained in section 3 of chapter 4 of the 2007 Session Laws, is not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations are available and may be expended during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. LEGISLATIVE COUNCIL STUDY - IMMUNIZATION PROGRAM.** During the 2009-10 interim, the legislative council shall consider studying the state immunization program. The study, if conducted, must identify pharmacists' or other providers' ability and interest in immunizing children and include a review of the effect of the program on public health units, including billing, billing services, fee collections, and uncollectible accounts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 11. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 33

### SENATE BILL NO. 2005

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the Indian affairs commission.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the Indian affairs commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$485,363	\$70,717	\$556,080
Operating expenses	85,895	40,610	126,505
Total all funds	\$571,258	\$111,327	\$682,585
Less special funds	5,000	(5,000)	0
Total general fund	\$566,258	\$116,327	\$682,585
Full-time equivalent positions	4.00	0	4.00

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 34

### SENATE BILL NO. 2006

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the aeronautics commission; to amend and reenact section 57-43.3-06 of the North Dakota Century Code, relating to use of special funds received by the aeronautics commission; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$802,732	\$84,502	\$887,234
Operating expenses	1,960,304	(118,872)	1,841,432
Capital assets	734,000	(334,000)	400,000
Grants	3,575,000	6,215,000	9,790,000
Total all funds	\$7,072,036	\$5,846,630	\$12,918,666
Less estimated income	6,522,036	5,846,630	12,368,666
Total general fund	\$550,000	\$0	\$550,000
Full-time equivalent positions	6.00	0.00	6.00

**SECTION 2. AMENDMENT.** Section 57-43.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.3-06. Distribution of revenue.** The tax collected by the commissioner pursuant to section 57-43.3-04 must be deposited by the commissioner in the office of the state treasurer, who shall deposit such moneys in a special fund known as the state aeronautics commission special fund. These funds are appropriated to the commission, and must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the commission and approved by the office of management and budget, for commission administration and the purpose of ~~matching of any funds made available by political subdivisions or airport authorities of this state, the state, or the United States, only providing up to ninety percent of the project costs~~ if the political subdivision or airport authority is not qualified for or does not receive any funds under section 2-05-06.5. These funds must be used for airport construction or improvement projects, including airport administration and terminal buildings, hangars, landing strips for aircraft, and purchase of sites for airports or landing fields and easements and for maintenance, clearing of sites, marking, lighting, and engineering and navigational aids, all related to aeronautics in amounts as the commission may determine and upon projects as the commission may approve.

**SECTION 3. EXPIRATION DATE.** Section 2 of this Act is effective through June 30, 2011, and after that date is ineffective.

Approved May 1, 2009

Filed May 4, 2009

## CHAPTER 35

### SENATE BILL NO. 2007

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and department of veterans' affairs; to provide for contingent funding; to provide an exception to the moratorium on expansion of basic care bed capacity; to provide legislative intent; and to provide for a report to the budget section.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and department of veterans' affairs for the purpose of defraying the expenses of the veterans' home and department of veterans' affairs, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

VETERANS' HOME			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,833,115	\$2,705,740	\$11,538,855
Operating expenses	3,512,000	1,049,857	4,561,857
Capital assets	14,945,777	(14,685,871)	259,906
Life safety improvements	0	0	0
New veterans' home	0	90,088	90,088
Total all funds	\$27,290,892	(\$10,840,186)	\$16,450,706
Less estimated income	23,431,326	(12,397,937)	11,033,389
Total general fund	\$3,859,566	\$1,557,751	\$5,417,317
Full-time equivalent positions	92.37	28.35	120.72

##### Subdivision 2.

VETERANS' AFFAIRS			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Veterans' affairs	\$807,166	\$204,321	\$1,011,487
Total general fund	\$807,166	\$204,321	\$1,011,487
Full-time equivalent positions	7.00	0	7.00

##### Subdivision 3.

BILL TOTAL			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$4,666,732	\$1,762,072	\$6,428,804
Grand total special funds	23,431,326	(12,279,346)	11,151,980
Grand total all funds	\$28,098,058	(\$10,517,274)	\$17,580,784

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Veterans' home		
Life safety improvements	\$265,700	\$0
New veterans' home	6,483,226	0
Electronic health record system	0	98,400
Construction project manager	0	90,088
General fund salary funding of new facility positions	0	502,240
Department of veterans' affairs		
Electronic storage system	21,356	0
Secure filing system	38,250	0
Total all funds	\$6,808,532	\$690,728
Total general fund	\$325,306	\$690,728
Total special funds	\$6,483,226	\$0

The 2009-11 one-time funding amounts are not a part of the agencies' base budget for the 2011-13 biennium. The veterans' home and department of veterans' affairs shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the veterans' home, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Thermal imager (funds from the department of commerce)	\$5,500
Electronic health records system	98,400
Bobcat utility vehicle	<u>14,691</u>
Total federal funds	\$118,591

The veterans' home may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. CONTINGENT FUNDING - EQUIPMENT AND PROJECTS.** Section 1 of this Act includes \$5,500 for a thermal imager and \$98,400 for an electronic health care records system from the general fund which may be spent only to the extent that federal funds appropriated in section 3 of this Act are not available for these purposes.

**SECTION 5. VETERANS' HOME SHARE OF SALARY EQUITY POOL.** The office of management and budget shall provide three-fourths of one percent of any general fund salary equity pool that is appropriated for salary equity increases for classified state employees, for the biennium beginning July 1, 2009, and ending June 30, 2011, to the veterans' home.

**SECTION 6. EXCEPTION TO THE MORATORIUM ON EXPANSION OF BASIC CARE BED CAPACITY.** Notwithstanding North Dakota Century Code section 23-09.3-01.1, after completion of the veterans' home construction project, the veterans' home may add one bed to its licensed basic care facility capacity. This one bed is in addition to the authority granted the veterans' home in section 3 of chapter 55 of the 2007 Session Laws relating to converting fourteen beds from licensed basic care beds to licensed nursing facility beds and provides for a total of ninety-eight basic care beds and fifty-two licensed nursing facility beds.

**SECTION 7. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS AUTHORIZED FOR THE NEW VETERANS' HOME FACILITY.** It is the intent of the sixty-first legislative assembly that the veterans' home not fill any of the twenty-four full-time equivalent positions for the new veterans' home authorized in subdivision 1 of section 1 of this Act prior to June 1, 2010.

**SECTION 8. REPORT TO BUDGET SECTION - VETERANS' HOME CONSTRUCTION PROJECT.** The veterans' home construction project manager shall provide a quarterly written summary report to the budget section regarding the status of the veterans' home construction project during the 2009-10 interim.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 36

### SENATE BILL NO. 2008

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of financial institutions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of financial institutions for the purpose of defraying the expenses of the department of financial institutions, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,126,408	\$635,817	\$4,762,225
Operating expenses	1,031,014	273,249	1,304,263
Contingency	20,000	0	20,000
Total special funds	\$5,177,422	\$909,066	\$6,086,488
Full-time equivalent positions	27.00	2.00	29.00

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 37

### SENATE BILL NO. 2009

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state fair association; and to provide legislative intent.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets	\$725,000	\$17,485,000	\$18,210,000
Premiums	<u>442,150</u>	<u>45,000</u>	<u>487,150</u>
Total all funds	\$1,167,150	\$17,530,000	\$18,697,150
Less estimated income	<u>0</u>	<u>3,000,000</u>	<u>3,000,000</u>
Total general fund	\$1,167,150	\$14,530,000	\$15,697,150

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Grandstand construction	\$0	\$18,000,000
Total all funds	\$0	\$18,000,000
Total special funds	<u>0</u>	<u>3,000,000</u>
Total general fund	\$0	\$15,000,000

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The state fair shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 8, 2009  
Filed May 19, 2009

## CHAPTER 38

### SENATE BILL NO. 2010

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the council on the arts; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of the council on the arts, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$591,977	\$100,470	\$692,447
Operating expenses	246,862	45,183	292,045
Grants	1,605,278	224,450	1,829,728
Total all funds	<u>\$2,444,117</u>	<u>\$370,103</u>	<u>\$2,814,220</u>
Less estimated income	1,288,318	157,168	1,445,486
Total general fund	<u>\$1,155,799</u>	<u>\$212,935</u>	<u>\$1,368,734</u>
Full-time equivalent positions	5.00	0.00	5.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Grants	\$0	\$57,450
Lincoln bicentennial	10,000	0
Total general fund	\$10,000	\$57,450

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The council on the arts shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION.** All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of

2009, not otherwise appropriated, to the council on the arts, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Grants to arts organizations and administrative support	\$290,000
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The council on the arts may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 5. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 39

### SENATE BILL NO. 2011

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; and to provide a statement of legislative intent.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying the expenses of the highway patrol, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Administration	\$2,565,841	\$360,578	\$2,926,419
Field operations	34,298,998	3,079,356	37,378,354
Law enforcement training academy	1,400,689	96,253	1,496,942
Deferred maintenance	0	100,000	100,000
Total all funds	\$38,265,528	\$3,636,187	\$41,901,715
Less estimated income	11,212,205	(318,475)	10,893,730
Total general fund	\$27,053,323	\$3,954,662	\$31,007,985
Full-time equivalent positions	193.00	1.00	194.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

One-Time Funding Description	2007-09	2009-11
In-car video equipment	\$642,000	\$0
Capitol security software	50,000	0
Automated external defibrillators	150,000	0
Capitol security upgrade	0	80,000
Commercial vehicle information exchange window system	0	100,000
Weigh station repairs	0	100,000
Total general fund	\$842,000	\$280,000

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The highway patrol shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. DEFERRED MAINTENANCE - TRANSFERS.** The highway patrol may transfer from the deferred maintenance line to the other lines contained in section 1 of this Act, amounts necessary to address extraordinary repair needs. Any

amounts transferred must be reported to the director of the office of management and budget.

**SECTION 4. SPECIAL FUNDS TRANSFER.** The less estimated income line item in section 1 of this Act includes the sum of \$4,550,725, or so much of the sum as may be necessary, from the state highway tax distribution fund which may be transferred at the direction of the superintendent of the highway patrol for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. PAYMENTS TO HIGHWAY PATROL OFFICERS.** Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 1 of this Act an amount not to exceed \$200 per month for the biennium beginning July 1, 2009, and ending June 30, 2011. The payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. The amounts must be paid at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

**SECTION 6. LEGISLATIVE INTENT - AUTOMATED PERMITS.** It is the intent of the sixty-first legislative assembly that the highway patrol proceed with implementation of the commercial vehicle information exchange window system and with preparations to allow for the automated issuance of highway permits.

**SECTION 7. COMMERCIAL VEHICLE INFORMATION EXCHANGE WINDOW SYSTEMS AND NETWORKS - USE OF FUNDING - BUDGET SECTION REPORT.** The administration line item in section 1 of this Act includes \$100,000 from the general fund for the commercial vehicle information systems and networks. Any funds designated for the implementation of the system that are not used for this purpose may not be spent for other purposes and must be included in the agency's unspent general fund appropriation authority for the biennium beginning July 1, 2009, and ending June 30, 2011. The highway patrol shall report semiannually to the budget section regarding the status of implementation of this system and on the use of these funds.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 40

### SENATE BILL NO. 2012

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide an appropriation to the state treasurer; to provide for budget section reports; to provide for a state disaster relief fund; to create and enact a new section to chapter 24-01 and a new section to chapter 54-27 of the North Dakota Century Code, relating to the name of United States highway 85 and transportation funding reports; to amend and reenact sections 24-02-35.2, 24-02-44, 39-04-19, 54-27-19, 54-27-19.1, 57-40.3-10, 57-43.1-06, and 57-43.2-04.2 of the North Dakota Century Code, relating to authority to borrow for disasters, the proceeds from the sale of road materials, and the collection and distribution of highway funds; to repeal section 39-04.2-03 of the North Dakota Century Code, relating to the registration fee for the public transportation fund; to provide for transfers; to provide for legislative council studies; to provide an effective date; to provide an expiration date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of transportation for the purpose of defraying the expenses of the department of transportation, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$127,326,239	\$20,047,015	\$147,373,254
Operating expenses	174,697,663	14,107,351	188,805,014
Capital assets	548,721,098	113,267,450	661,988,548
Grants	52,412,500	14,853,601	67,266,101
Total special funds	\$903,157,500	\$162,275,417	\$1,065,432,917
Full-time equivalent positions	1,052.50	2.00	1,054.50

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the department of transportation, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Highway infrastructure	\$170,126,497
Grants to rural transit programs	5,956,174
Total federal funds	\$176,082,671

The department of transportation may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act

of 2009 in excess of the amounts appropriated under this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. APPROPRIATION - STATE TREASURER - WEATHER-RELATED COST-SHARING PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury attributable to motor vehicle excise tax collections during the 2007-09 biennium, not otherwise appropriated, the sum of \$59,900,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing weather-related cost-sharing funds, for the period beginning with the effective date of this Act and ending June 30, 2009. The state treasurer shall distribute the funds appropriated under this section before June 30, 2009, as follows:

1. Ten million dollars to townships in accordance with the formula used to distribute funds to townships under section 54-27-19.1, except that organized townships are not required to provide matching funds to receive distributions under this section.
2. Forty-one million four hundred thousand dollars to counties and cities in accordance with the formula used to distribute funds to counties and cities under subsection 2 of section 54-27-19.
3. Seven million five hundred thousand dollars to the state highway fund.
4. One million dollars to the public transportation fund to be distributed in accordance with section 39-04.2-04.

**SECTION 4. State disaster relief fund - Creation - Uses.** There is created in the state treasury a state disaster relief fund. Moneys in the fund are to be used subject to legislative appropriations for providing funding for defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Any interest or other fund earnings must be deposited in the fund.

**SECTION 5. APPROPRIATION - TRANSFER.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$43,000,000, which the office of management and budget shall transfer to the state disaster relief fund during the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 6. APPROPRIATION - ADJUTANT GENERAL - BUDGET SECTION APPROVAL.** There is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$43,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of providing emergency relief funding, for the period beginning with the effective date of this Act and ending June 30, 2011. The adjutant general may use up to \$20,000,000 of the funds appropriated in this section for the purpose of providing emergency snow removal grants to counties, cities, and townships in accordance with section 7 of this Act. The adjutant general may use up to \$23,000,000 of the funds appropriated in this section for paying costs relating to the

2009 flood disaster, snow removal damage to roads, and other disasters in accordance with section 8 of this Act.

**SECTION 7. EMERGENCY SNOW REMOVAL GRANTS - GUIDELINES - BUDGET SECTION REPORT.** A county, township, or city may apply to the department of emergency services for an emergency snow removal grant for reimbursement of up to fifty percent of the costs incurred by the county, township, or city for the period January 2009 through March 2009 that exceeds two hundred percent of the average costs incurred for these months in 2004 through 2008.

Each county, township, or city requesting reimbursement under this section shall submit the request in accordance with rules developed by the department of emergency services. The department of emergency services shall distribute these grants prior to June 30, 2009, and shall report to the budget section regarding the grants awarded under this section.

**SECTION 8. EMERGENCY DISASTER RELIEF GRANTS - GUIDELINES - BUDGET SECTION REPORT - BUDGET SECTION APPROVAL.** A political subdivision receiving federal emergency relief funding relating to disasters occurring from January 2009 through June 2009 may apply to the department of emergency services for an emergency relief grant of up to fifty percent of the local match required to receive the federal emergency relief funding. Each political subdivision requesting reimbursement under this section shall submit the request in accordance with rules developed by the department of emergency services. The department of emergency services may distribute up to \$13,000,000 of grants under this section. Any additional grant expenditures require budget section approval. The department of emergency services shall report to the budget section on grants awarded under this section in the fourth quarter of calendar year 2009 and the third quarter of calendar year 2010. Any funds provided for by the department of emergency services in this section which are not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes, subject to budget section approval.

**SECTION 9. APPROPRIATION - EXEMPTION.** There is appropriated out of any moneys in the state highway fund in the state treasury, not otherwise appropriated, the sum of \$7,500,000, or so much of the sum as may be necessary, and out of any moneys in the public transportation fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the department of transportation for highway projects and public transportation grants, for the period beginning with the effective date of this Act and ending June 30, 2009. Funds appropriated in this section are not subject to section 54-44.1-11 and any unexpended funds may be spent by the department of transportation during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. APPROPRIATION - TRANSFER - STATE HIGHWAY FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,600,000, which the office of management and budget shall transfer to the state highway fund for the purpose of defraying the expenses of highway projects in the Devils Lake area, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 11. USE OF HIGHWAY FUNDING - REPORT TO THE BUDGET SECTION.** The department of transportation shall coordinate with the department of emergency services to compile information regarding the use of state, federal, emergency, and other highway funding by the department of transportation, counties,

cities, and townships during the period beginning with the effective date of this Act and ending June 30, 2011. The department of transportation shall provide periodic reports to the budget section regarding the use of funds during the 2009-10 interim.

**SECTION 12. HIGHWAY FUNDING - ONE-TIME FUNDING.** Any highway funding received by the state, counties, cities, and townships in excess of the amounts received through distributions from the highway tax distribution fund under section 54-27-19 or existing federal highway aid programs is considered one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 13. LINE ITEM TRANSFERS.** The director of the department of transportation may transfer between the operating and capital assets line items in section 1 of this Act when it is cost-effective for construction and maintenance of highways. The department of transportation shall notify the office of management and budget and report to the legislative council any transfers made pursuant to this section.

**SECTION 14.** A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

**Theodore Roosevelt expressway - United States highway 85.** Notwithstanding any previous designation, the department shall designate United States highway 85 from the South Dakota border to the junction of United States highway 2 and United States highway 2 from the Montana border to the junction of United States highway 85 as the Theodore Roosevelt expressway and at a minimum shall place signs along the highway designating that name and may use any appropriate signs donated to the department.

**SECTION 15. AMENDMENT.** Section 24-02-35.2 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-35.2. Deposit of sale proceeds - Continuing appropriation.** The proceeds from any sale of road materials made under section 24-02-35.1 must be deposited in the department of transportation fund. An amount not to exceed the total sum of the sales under section 24-02-35.1, but not to exceed ~~two hundred thousand~~ one million dollars a year, may be withdrawn upon voucher of the department for purchasing road materials. All moneys deposited in the fund pursuant to this section are hereby appropriated to the department for the purposes of this section.

**SECTION 16. AMENDMENT.** Section 24-02-44 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-44. Authority to borrow funds for a disaster - Appropriation.** The department of transportation, subject to the approval of the emergency commission, may borrow moneys from the Bank of North Dakota to advance and match federal emergency relief funds. Any moneys borrowed from the Bank of North Dakota pursuant to this section are appropriated. ~~If it appears to the department of transportation that at the end of the biennium the amount available to repay the amount borrowed plus interest is insufficient to totally repay the Bank of North Dakota, the department of transportation shall request from the legislative assembly a deficiency appropriation from the state highway fund sufficient for the repayment of the amount borrowed plus interest.~~

**11 SECTION 17. AMENDMENT.** Section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-19. Motor vehicle registration fees and mile tax.** Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
  - a. Passenger motor vehicles:

**YEARS REGISTERED**

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th, 11th, and 12th Years	13th and Subsequent Years
Less than 3,200	<del>\$70</del> \$73	<del>\$62</del> \$65	<del>\$64</del> \$57	<del>\$46</del> \$49
3,200 - 4,499	<del>90</del> 93	<del>78</del> 81	<del>66</del> 69	<del>64</del> 57
4,500 - 4,999	<del>108</del> 111	<del>94</del> 94	<del>76</del> 79	<del>60</del> 63
5,000 - 5,999	<del>130</del> 142	<del>142</del> 120	<del>96</del> 98	<del>73</del> 76
6,000 - 6,999	<del>172</del> 175	<del>143</del> 146	<del>114</del> 117	<del>86</del> 89
7,000 - 7,999	<del>205</del> 208	<del>160</del> 172	<del>134</del> 137	<del>99</del> 102
8,000 - 8,999	<del>238</del> 241	<del>196</del> 199	<del>154</del> 157	<del>112</del> 115
9,000 and over	<del>274</del> 274	<del>222</del> 225	<del>174</del> 177	<del>126</del> 128

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

A pickup truck is subject to registration at the rates prescribed for other vehicles under this subdivision by applying the shipping weight of the vehicle to the fee schedule. At a minimum, the registered gross weight displayed on the registration card for a pickup truck must be twice the shipping weight of the vehicle. Unless otherwise exempted by this chapter, the owner of a pickup truck shall request the registered gross weight of the pickup truck be increased to ensure the registered gross weight is sufficient to include the total weight of the vehicle and any load transported on or by the vehicle. For purposes of this subdivision, a pickup truck is a motor vehicle with a manufacturer's gross vehicle weight rating of less than eleven thousand five hundred pounds [5216.31 kilograms], with an unladen weight of less than eight thousand

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<sup>11</sup> Section 39-04-19 was also amended by section 1 of House Bill No. 1153, chapter 326, and section 8 of Senate Bill No. 2149, chapter 322.

pounds [3628.74 kilograms], and which is equipped with an open box-type bed not exceeding nine feet [2.74 meters] in length.

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under this subsection or subsection 5:

YEARS REGISTERED

Gross Weights	1st Through 6th Years	7th Through 9th Years	10th Through 12th Years	13th Through 19th Years	20th and Subsequent Years
Not over 4,000	<del>668</del> \$71	<del>666</del> \$58	<del>660</del> \$53	<del>647</del> \$50	<del>646</del> \$49
4,001 - 6,000	<del>73</del> 76	<del>60</del> 63	<del>64</del> 57	<del>48</del> 51	<del>47</del> 50
6,001 - 8,000	<del>78</del> 81	<del>66</del> 68	<del>68</del> 61	<del>49</del> 52	<del>48</del> 51
8,001 - 10,000	<del>83</del> 86	<del>70</del> 73	<del>62</del> 65	<del>64</del> 54	<del>66</del> 53
10,001 - 12,000	<del>88</del> 91	<del>76</del> 78	<del>66</del> 69	<del>63</del> 56	<del>62</del> 55
12,001 - 14,000	<del>93</del> 96	<del>80</del> 83	<del>70</del> 73	<del>66</del> 59	<del>66</del> 58
14,001 - 16,000	<del>98</del> 101	<del>86</del> 88	<del>74</del> 77	<del>60</del> 62	<del>58</del> 61
16,001 - 18,000	<del>103</del> 106	<del>90</del> 93	<del>78</del> 81	<del>64</del> 64	<del>60</del> 63
18,001 - 20,000	<del>108</del> 109	<del>96</del> 96	<del>80</del> 83	<del>62</del> 65	<del>64</del> 64

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years	8th, 9th, 10th, 11th, and 12th Years	13th and Subsequent Years
20,001 - 22,000	<del>436</del> \$139	<del>449</del> \$113	<del>627</del> \$100
22,001 - 26,000	<del>488</del> 191	<del>456</del> 161	<del>442</del> 145
26,001 - 30,000	<del>249</del> 252	<del>207</del> 210	<del>185</del> 188
30,001 - 34,000	<del>345</del> 318	<del>260</del> 263	<del>232</del> 235
34,001 - 38,000	<del>376</del> 379	<del>309</del> 312	<del>276</del> 278
38,001 - 42,000	<del>427</del> 440	<del>368</del> 361	<del>347</del> 320
42,001 - 46,000	<del>498</del> 501	<del>406</del> 409	<del>360</del> 363
46,001 - 50,000	<del>560</del> 562	<del>466</del> 458	<del>409</del> 406
50,001 - 54,000	<del>620</del> 632	<del>543</del> 516	<del>464</del> 457
54,001 - 58,000	<del>690</del> 693	<del>602</del> 585	<del>497</del> 500
58,001 - 62,000	<del>762</del> 755	<del>644</del> 614	<del>540</del> 543
62,001 - 66,000	<del>842</del> 815	<del>669</del> 662	<del>583</del> 586
66,001 - 70,000	<del>873</del> 876	<del>708</del> 711	<del>626</del> 628
70,001 - 74,000	<del>934</del> 937	<del>767</del> 760	<del>668</del> 671
74,001 - 78,000	<del>996</del> 998	<del>806</del> 809	<del>714</del> 714
78,001 - 82,000	<del>1,066</del> 1,059	<del>866</del> 858	<del>764</del> 757
82,001 - 86,000	<del>1,179</del> 1,182	<del>909</del> 963	<del>844</del> 844
86,001 - 90,000	<del>1,304</del> 1,304	<del>1,064</del> 1,067	<del>928</del> 931
90,001 - 94,000	<del>1,423</del> 1,426	<del>1,169</del> 1,172	<del>1,045</del> 1,018
94,001 - 98,000	<del>1,546</del> 1,538	<del>1,274</del> 1,277	<del>1,103</del> 1,106
98,001 - 102,000	<del>1,667</del> 1,670	<del>1,378</del> 1,381	<del>1,190</del> 1,193
102,001 - 105,500	<del>1,780</del> 1,792	<del>1,483</del> 1,486	<del>1,277</del> 1,280

- c. Notwithstanding the fees provided by subdivision a of subsection 2, only one-half of the increase in registration fees, rounded up to the nearest dollar, resulting from the reclassification of pickup trucks in 2006 from subdivision b of subsection 2 to subdivision a of subsection 2 is effective from July 1, 2006, through June 30, 2007.
- d. Motorcycles, fifteen dollars.
- 3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross

weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars. Upon the request of a person with a trailer or farm trailer to whom a registration or identification plate is provided under this subsection, the department shall provide a plate of the same size as provided for a motorcycle. The department shall provide notification of this option to the person before the replacement or issuance of the plate.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
20,001 - 22,000	\$408 \$111	\$94 \$97	\$80 \$83	\$62 \$65
22,001 - 24,000	443 116	98 101	83 86	64 67
24,001 - 26,000	424 124	104 107	87 90	66 69
26,001 - 28,000	432 135	112 115	93 96	70 73
28,001 - 30,000	444 144	120 123	99 102	74 77
30,001 - 32,000	466 159	132 136	110 113	82 86
32,001 - 34,000	466 169	144 144	116 119	87 90
34,001 - 36,000	476 179	149 152	122 125	91 94
36,001 - 38,000	486 189	157 160	128 131	95 98
38,001 - 40,000	496 199	166 168	134 137	99 102
40,001 - 42,000	206 209	172 176	140 143	103 106
42,001 - 44,000	216 219	184 184	146 149	107 110
44,001 - 46,000	226 229	189 192	152 155	111 114
46,001 - 48,000	236 239	197 200	158 161	115 118
48,001 - 50,000	246 249	205 208	164 167	119 122
50,001 - 52,000	266 269	222 225	180 183	133 136
52,001 - 54,000	276 279	234 234	186 189	137 140
54,001 - 56,000	286 289	239 242	192 195	141 144
56,001 - 58,000	296 299	247 250	198 201	145 148
58,001 - 60,000	306 309	255 258	204 207	149 152
60,001 - 62,000	316 319	262 266	210 213	153 156
62,001 - 64,000	326 329	274 274	216 219	157 160
64,001 - 66,000	336 339	279 282	222 225	161 164
66,001 - 68,000	346 349	287 290	228 231	165 168
68,001 - 70,000	356 359	295 298	234 237	169 172
70,001 - 72,000	366 369	303 306	240 243	173 176
72,001 - 74,000	376 379	311 314	246 249	177 180
74,001 - 76,000	386 389	319 322	252 255	181 184
76,001 - 78,000	396 399	327 330	258 261	185 188
78,001 - 80,000	406 409	335 338	264 267	189 192
80,001 - 82,000	416 419	343 346	270 273	193 196
82,001 - 84,000	426 429	351 354	276 279	197 200
84,001 - 86,000	436 439	359 362	282 285	201 204
86,001 - 88,000	446 449	367 370	288 291	205 208
88,001 - 90,000	456 459	375 378	294 297	209 212
90,001 - 92,000	466 469	383 386	300 303	213 216
92,001 - 94,000	476 479	391 394	306 309	217 220
94,001 - 96,000	486 489	400 403	312 315	221 224
96,001 - 98,000	496 499	408 411	318 321	225 228
98,001 - 100,000	506 509	416 419	324 327	229 232
100,001 - 102,000	516 519	424 427	330 333	233 236
102,001 - 104,000	526 529	432 435	336 339	237 240
104,001 - 105,500	536 539	440 443	342 345	241 244
	546 549	448 451	348 351	245 248
		456 459	354 357	249 252
		464 467	360 363	253 256
		472 475	366 369	257 260
		480 483	372 375	261 264
		488 491	378 381	265 268
		496 499	384 387	269 272
		504 507	390 393	273 276
		512 515	396 399	277 280
		520 523	402 405	281 284
		528 531	408 411	285 288
		536 539	414 417	289 292
		544 547	420 423	293 296
		552 555	426 429	297 300
			432 435	301 304
			438 441	305 308
			444 447	309 312
			450 453	313 316
			456 459	317 320
			462 465	321 324
			468 471	325 328
			474 477	329 332
			480 483	333 336
			486 489	337 340
			492 495	341 344
			498 501	345 348
			504 507	349 352
			510 513	353 356
			516 519	357 360
			522 525	361 364
			528 531	365 368
			534 537	369 372
			540 543	373 376
			546 549	377 380
			552 555	381 384

- 6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.
- 7. ~~Thirteen dollars of each registration fee collected under subsections 2 and 5 must be deposited in the state highway fund.~~

12 **SECTION 18. AMENDMENT.** Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities.** A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. Any The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the

12 Section 54-27-19 was also amended by section 1 of House Bill No. 1130, chapter 479.

purpose of providing administrative assistance to other transferees. After the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. ~~Sixty-three~~ Sixty-one and three-tenths percent of such moneys must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. ~~Thirty-seven~~ Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. ~~Thirty-four and five-tenths percent of such moneys~~ must be allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county must be credited with the certificates of title of all motor vehicles registered by residents of ~~such~~ the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to ~~such~~ the census. ~~Provided, however, that~~ However, in each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
  - a. A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
  - b. The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under subdivision a.
  - c. The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under subdivision a.

- d. The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under subdivisions b and c for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota; ~~provided, that any and an~~ incorporated city may use ~~such~~ the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside ~~such~~ the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

**SECTION 19. AMENDMENT.** Section 54-27-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-19.1. Township highway aid fund - Distribution.** ~~Notwithstanding any other provision of law, one cent per gallon [3.79 liters] of the tax imposed by sections 57-43.1-02 and 57-43.2-02 may not be refunded and the proceeds must be distributed as provided in this section. The tax commissioner shall transfer the proceeds of one cent per gallon [3.79 liters] of the tax imposed by sections 57-43.1-02 and 57-43.2-02 to the state treasurer who shall deposit the proceeds in a township highway aid fund in the state treasury.~~ The state treasurer shall no less than quarterly allocate and distribute all moneys in the township highway aid fund to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds under this section, organized townships ~~shall~~ must provide fifty percent matching funds. The county treasurer shall allocate the funds received to the organized townships in the county which provide fifty percent matching funds based on the length of township roads in each ~~such of those~~ organized township townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county ~~has no~~ does not have organized townships, or has some organized and some unorganized townships, the county shall retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county. Moneys retained by a county for the benefit of unorganized townships under this section must be deposited in the county road and bridge fund. Moneys retained by the county treasurer due to the failure of organized townships to provide required matching funds must be returned to the state treasurer who shall deposit the funds in the highway tax distribution fund. The board of county commissioners shall certify to the state treasurer any change in township road mileage when a change occurs and shall, by July first of each even-numbered year, certify the total number of township road mileage in each of the county's organized and unorganized townships. The state treasurer shall prescribe the form and manner by which the certification is made.

**SECTION 20.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Report on transportation funding and expenditures.** Each county, city, and township shall provide to the tax commissioner an annual report on funding and expenditures relating to transportation projects and programs. The report must be provided within ninety days after the close of a calendar year. The report must contain by fund the beginning balance, revenues by major source, expenditures by major category, the ending balance, and any other information requested by the tax commissioner.

**SECTION 21. AMENDMENT.** Section 57-40.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.3-10. (Effective through June 30, 2009 2011) Transfer of revenue.**

All moneys collected and received under this chapter after moneys are deposited in the state aid distribution fund under section 57-39.2-26.1 must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited as follows:

1. ~~For~~ Twenty-five percent to the highway fund.
2. ~~Ninety~~ Seventy-five percent to the state general fund.

**(Effective after June 30, 2009 2011) Transfer of revenue.** All moneys collected and received under this chapter must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited to the general fund.

**SECTION 22. AMENDMENT.** Section 57-43.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-06. Refund to prevent taxation by multiple jurisdictions.** Any person to whom motor vehicle fuel is sold on which the tax imposed by this chapter has been paid, who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. ~~The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway aid fund.~~ A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

**SECTION 23. AMENDMENT.** Section 57-43.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions.** Any person to whom special fuel is sold on which the tax imposed by this chapter has been paid, who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. ~~The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the~~

~~township highway aid fund.~~ A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

**SECTION 24. LEGISLATIVE COUNCIL STUDY - FARGO DISTRICT OFFICE SITE.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of relocating the Fargo district office facility. The study, if conducted, must include a review of the estimated value of the current site property, the best use of the current property, and potential locations for a new district office facility. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 25. LEGISLATIVE COUNCIL STUDY - FEDERAL TRANSPORTATION MATCHING FUNDS.** During the 2009-10 interim, the legislative council shall consider studying the potential options for matching federal highway construction funding. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 26. REPEAL.** Section 39-04.2-03 of the North Dakota Century Code is repealed.

**SECTION 27. EMERGENCY.** Sections 2, 3, 4, 5, 6, 7, 8, and 9 of this Act are declared to be an emergency measure.

Approved May 1, 2009  
Filed May 1, 2009

## CHAPTER 41

### SENATE BILL NO. 2013

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide for distribution amounts from permanent funds; and to provide a transfer to the general fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,500,324	\$714,526	\$3,214,850
Operating expenses	675,700	64,252	739,952
Capital assets	10,000	0	10,000
Grants	5,888,100	3,889,659	9,777,759
Contingencies	<u>50,000</u>	<u>0</u>	<u>50,000</u>
Total special funds	\$9,124,124	\$4,668,437	\$13,792,561
Full-time equivalent positions	18.75	3.00	21.75

**SECTION 2. GRANTS.** Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of the Act.

**SECTION 3. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer from the contingencies line item in section 1 of this Act to all other line items. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 4. DISTRIBUTIONS TO STATE INSTITUTIONS.** Notwithstanding section 15-03-05.2, the board of university and school lands shall distribute during the biennium beginning July 1, 2009, and ending June 30, 2011, the following amounts, or so much income as may be available, from the permanent funds managed for the benefit of the following entities:

Common schools	\$77,000,000
North Dakota state university	1,230,000
University of North Dakota	1,114,000
Youth correctional center	438,000
School for the deaf	356,000
State college of science	410,000
State hospital	480,000
Veterans' home	276,000
Valley City state university	260,000

North Dakota vision services - school for the blind	234,000
Mayville state university	178,000
Minot state university - Bottineau	28,000
Dickinson state university	28,000
Minot state university	28,000
Total	\$82,060,000

**SECTION 5. TRANSFER TO GENERAL FUND FROM LANDS AND MINERALS TRUST FUND.** During the biennium beginning July 1, 2009, and ending June 30, 2011, the director of the office of management and budget may transfer special funds from the lands and minerals trust fund to the general fund in the amount of \$35,000,000.

**SECTION 6. FULL-TIME EQUIVALENT AUTHORIZATION - BUDGET SECTION APPROVAL.** Section 1 of this Act includes one full-time equivalent position relating to minerals management which may be filled only upon budget section approval.

**SECTION 7. ADDITIONAL FUNDING - APPROPRIATION.** In addition to the funds appropriated in the grants line item in section 1 of this Act, there is appropriated any additional funds that may be authorized by the sixty-first legislative assembly for deposit in the oil and gas impact grant fund to the land department for providing oil and gas impact grants, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009

Filed May 5, 2009

## CHAPTER 42

### SENATE BILL NO. 2014

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to create and enact two new sections to chapter 54-18 of the North Dakota Century Code, relating to mill and elevator profits and gain sharing; to amend and reenact section 54-17.5-01 of the North Dakota Century Code, relating to education activities relating to the lignite industry; to repeal section 16 of chapter 14 of the 2007 Session Laws, relating to a transfer from the North Dakota mill and elevator association; to provide legislative intent; to provide an appropriation; to provide a contingent appropriation; to provide an exemption; to authorize transfers; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of the state industrial commission and agencies under its control, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Subdivision 1.			
INDUSTRIAL COMMISSION			
	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,207,544	\$2,323,453	\$9,530,997
Operating expenses	2,255,690	459,886	2,715,576
Capital assets	34,500	14,500	49,000
Grants - Lignite research and development	19,410,600	560,700	19,971,300
State facility lignite feasibility demonstration project	0	400,000	400,000
Grants - Bond payments	29,475,016	(2,033,151)	27,441,865
Oil and gas division contingency	285,000	(285,000)	0
Biomass incentive and research	2,000,000	(2,000,000)	0
Renewable energy development	20,000,000	(17,000,000)	3,000,000
Total all funds	<u>\$80,668,350</u>	<u>(\$17,559,612)</u>	<u>\$63,108,738</u>
Less estimated income	69,392,346	(20,083,862)	49,308,484
Total general fund	\$11,276,004	\$2,524,250	\$13,800,254
Full-time equivalent positions	55.37	5.69	61.06

## Subdivision 2.

## BANK OF NORTH DAKOTA - OPERATIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$35,271,867	\$6,490,407	\$41,762,274
Capital assets	1,900,000	(445,000)	1,455,000
Total from the Bank of North Dakota fund	\$37,171,867	\$6,045,407	\$43,217,274
Full-time equivalent positions	176.50	0.00	176.50

## Subdivision 3.

## BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Partnership in assisting community expansion fund	\$8,000,000	\$0	\$8,000,000
Agriculture partnership in assisting community expansion fund	1,400,000	1,000,000	2,400,000
Beginning farmer revolving loan fund	950,000	0	950,000
Biofuels partnership in assisting community expansion fund	0	700,000	700,000
Total all funds	\$10,350,000	\$1,700,000	\$12,050,000
Less beginning farmer revolving loan fund	950,000	0	950,000
Total general fund	\$9,400,000	\$1,700,000	\$11,100,000

## Subdivision 4.

## MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$20,053,037	\$2,546,287	\$22,599,324
Operating expenses	16,262,572	720,346	16,982,918
Contingencies	300,000	25,000	325,000
Agriculture promotion	150,000	0	150,000
Total from mill and elevator fund	\$36,765,609	\$3,291,633	\$40,057,242
Full-time equivalent positions	131.00	0.00	131.00

## Subdivision 5.

## HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,696,712	\$1,285,116	\$5,981,828
Operating expenses	9,412,778	(735,197)	8,677,581
Grants	27,319,800	(1,095,440)	26,224,360
Housing finance agency contingencies	100,000	0	100,000
Total from housing finance agency fund	\$41,529,290	(\$545,521)	\$40,983,769
Full-time equivalent positions	43.00	3.00	46.00

## Subdivision 6.

## BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$20,676,004	\$4,224,250	\$24,900,254
Grand total special funds	185,809,112	19,068,231	204,877,343
Grand total all funds	\$206,485,116	\$23,292,481	\$229,777,597

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the grand total appropriation in section 1 of this Act:

One-Time Funding Description	2007-09	2009-11
Biofuels partnership in assisting community expansion	\$4,200,000	\$700,000
Fossil restoration fund	250,000	0
Core and sample library repairs	230,000	0
State facility lignite feasibility demonstration project	0	400,000
Ag PACE disaster program	0	1,000,000
Recruitment/retention bonuses	0	185,000
Renewable energy development program	0	3,000,000
Fracturing sand and coalbed methane studies	0	93,152
Total general fund	\$4,680,000	\$5,378,512

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The industrial commission shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LEGISLATIVE INTENT - BOND PAYMENTS.** The amount of \$27,441,865 included in subdivision 1 of section 1 of this Act in the grants - bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 2009, and ending June 30, 2011:

North Dakota university system	\$12,014,048
North Dakota university system - Energy conservation projects	1,869,248
Department of corrections and rehabilitation - State penitentiary	2,203,515
Department of corrections and rehabilitation - Energy conservation projects	18,580
State department of health	704,127
Job service North Dakota	747,772
Department of human services - State hospital	437,729
Department of human services - Developmental center at Grafton	501,657
Adjutant general	70,627
Information technology department - ConnectND	5,405,936
Office of management and budget	665,298
Office of the attorney general	765,882
State historical society	1,392,393
Parks and recreation	73,630
Research and extension service	571,423
Total	\$27,441,865

**SECTION 4. APPROPRIATION.** In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. APPROPRIATION - EMERGENCY COMMISSION APPROVAL.** In addition to the amount appropriated to the state industrial commission in subdivision 1 of section 1 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the state industrial commission for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. CONTINGENT DEPARTMENT OF MINERAL RESOURCES FUNDING - EMERGENCY COMMISSION APPROVAL.** Of the funds appropriated in the salaries and wages and operating expense line items in subdivision 1 of section 1 of this Act, \$515,207 are from the lands and minerals trust fund. If funds are required due to the average drilling rig count exceeding one hundred active rigs for each month in any consecutive three-month period, the oil and gas division may spend \$319,041 of these funds and hire up to two full-time equivalent positions, upon emergency commission approval. If funds are required due to receipt of an application for solution mining of potash or uranium, the geological survey division may spend \$196,166 of these funds and hire up to one full-time equivalent position, upon emergency commission approval.

**SECTION 7. EXEMPTION.** The biomass incentive and research fund is not subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at June 30, 2009, must be transferred to the renewable energy development fund.

**SECTION 8. TRANSFER.** The sum of \$471,633, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, may be transferred from the entities within the control of the state industrial commission to the industrial commission fund for administrative services rendered by commission. Transfers shall be made during the biennium beginning July 1, 2009, and ending June 30, 2011, upon order of the commission. Transfers from the student loan trust must be made to the extent permitted by sections 54-17-24 and 54-17-25.

**SECTION 9. APPROPRIATION - TRANSFER.** The funds appropriated in subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund; the agriculture partnership in assisting community expansion fund; and the biofuels partnership in assisting community expansion fund. The Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subsection 3 of section 1 of this Act.

**SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY.** The amount of \$1,500,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line item in subdivision 1 of section 1 of this Act, is appropriated from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that

will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated in this section are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 11. MILL AND ELEVATOR STUDY.** The industrial commission shall obtain the services of a consultant to evaluate the state mill and elevator association during the 2009-10 interim. The evaluation must include a comparison to industry averages or standards of:

1. Financial data reflected on balance sheets and income statements;
2. Cashflow data;
3. Ratio analysis of working capital, operating efficiency, marketing, and other ratios;
4. Liquidity ratios to determine appropriate working capital needed for the mill;
5. Pretax income levels;
6. Business opportunities;
7. Capital investment and recommended net assets levels; and
8. Officer and employee compensation guidelines, including gain-sharing programs.

The industrial commission shall provide a summary report exclusive of proprietary information to the budget section on the results of the evaluation during the 2009-10 interim.

**SECTION 12.** Two new sections to chapter 54-18 of the North Dakota Century Code are created and enacted as follows:

**Transfer of North Dakota mill and elevator profits to general fund.** The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

**Gain-sharing program.** For the purpose of this section, "gain-sharing program" means a program approved annually by the industrial commission with provisions that promote profitability, productivity, and safety. Any gain-sharing program approved by the industrial commission must include provisions that ensure that no payouts occur unless mill and elevator profits exceed one million dollars and transfers will be made to the state general fund for that program year.

**SECTION 13. AMENDMENT.** Section 54-17.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.5-01. Declaration of findings and public purpose.** The legislative assembly finds and declares that North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats three hundred thousand homes and businesses in eastern states, which is equivalent to over twenty thousand barrels of oil per day. The legislative assembly further finds and declares that North Dakota's lignite industry generates over ~~seventeen~~ twenty-eight thousand direct and indirect jobs for North Dakota, ~~over one~~ nearly three billion dollars in annual business volume, and over ~~sixty-five~~ one hundred three million dollars in annual tax revenue. The legislative assembly further finds and declares that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; support educational activities relating to the lignite industry; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota. The legislative assembly further finds and declares that development of North Dakota's lignite resources must be conducted in an environmentally sound manner that protects our state's air, water, and soil resources as specified by applicable federal and state law.

**SECTION 14. STATE FACILITY LIGNITE FEASIBILITY DEMONSTRATION PROJECT.** The state facility lignite feasibility demonstration project line item in subdivision 1 of section 1 of this Act includes \$400,000 from the general fund for the purpose of demonstrating the feasibility of using lignite at a state-owned facility equipped with coal-fired boilers generating at least 200,000 pounds of steam at 125 pounds per square inch. The use of any funds provided for in this section must be approved by the lignite research council and the industrial commission after following the standard lignite research development program review and approval process.

**SECTION 15. AGRICULTURE PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION DISASTER PROGRAM - RETURN OF FUNDS TO GENERAL FUND.** The agriculture partnership in assisting community expansion fund line item in subdivision 3 of section 1 of this Act includes \$1,000,000 from the general fund which may be deposited in the agriculture partnership in assisting community expansion fund and used by the Bank of North Dakota to expand parameters for the agriculture partnership in assisting community expansion disaster program to assist those farmers and livestock producers that suffered extraordinary losses directly as a result of the weather-related events in the winter and spring of 2009, for the period beginning with the effective date of this Act and ending June 30, 2011. The Bank of North Dakota shall return any agriculture partnership in assisting community expansion disaster program funds not obligated by January 1, 2011, to the general fund. The Bank of North Dakota may transfer funds available in the partnership in assisting community expansion and biofuels partnership in assisting community expansion programs to the agriculture partnership in assisting community expansion program for providing additional funds for the disaster program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 16. TRANSFER - BANK OF NORTH DAKOTA.** The industrial commission, by June 30, 2011, shall transfer from the current earnings and undivided profits of the Bank of North Dakota to the general fund an amount equal to any general fund moneys deposited in the agriculture partnership in assisting community expansion fund and obligated for the disaster program provided for under section 15 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 17. HOUSING FINANCE AGENCY FINANCING - PILOT PROJECT.** The housing finance agency may establish a pilot project using funds available in subdivision 5 of section 1 of this Act to provide incentives for private sector investment in single-family residential dwelling units and multifamily housing facilities in difficult-to-develop areas of the state, for the biennium beginning July 1, 2009, and ending June 30, 2011. The housing finance agency shall report to the budget section at its last interim meeting prior to the 2010 legislative assembly organizational session.

**SECTION 18. LEGISLATIVE INTENT - LAND PURCHASE.** It is the intent of the sixty-first legislative assembly that to the best of its ability the Bank of North Dakota ensure that properties adjacent to Bank of North Dakota property northwest of west street are developed for uses that are consistent with the mission and purpose of the Bank of North Dakota.

**SECTION 19. LEGISLATIVE INTENT - COLLEGE SAVE PROGRAM INCENTIVE.** It is the intent of the sixty-first legislative assembly that the Bank of North Dakota use administrative fee collections associated with the Bank's college SAVE program to provide incentives to establish 529 college savings plans under the Bank's college SAVE program.

**SECTION 20. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The industrial commission may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds received and spent under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 21. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the housing finance agency, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

HOME tax credit assistance program	\$4,860,574
Housing tax credit exchange program	<u>25,500,000</u>
Total federal funds	\$30,360,574

The housing finance agency may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009

in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 22. FEDERAL FISCAL STIMULUS BOND ALLOCATIONS - RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS - RECOVERY ZONE FACILITY BONDS - QUALIFIED ENERGY CONSERVATION BONDS.** Any bond allocations made available to the state of North Dakota under the federal American Recovery and Reinvestment Act of 2009 for the national recovery zone economic development bond limitation, the national recovery zone facility bond limitation, and the qualified energy conservation bond limitation must be reallocated by this state as provided therein and as may be provided in any guidance issued by the secretary of the treasury or the internal revenue service. Any such reallocation must be made by the governor, or may be delegated by the governor to the industrial commission or public finance authority.

**SECTION 23. DEPARTMENT OF MINERAL RESOURCES SHARE OF EQUITY POOL.** The office of management and budget shall provide at least four percent of all general fund salary equity pools that are appropriated for salary equity increases for state employees, for the biennium beginning July 1, 2009, and ending June 30, 2011, to the department of mineral resources for its nonclassified employees.

**SECTION 24. REPEAL.** Section 16 of chapter 14 of the 2007 Session Laws is repealed.

**SECTION 25. EMERGENCY.** The sum of \$1,000,000 from the general fund included in the agriculture partnership in assisting community expansion fund in subdivision 3 of section 1 of this Act and sections 13, 15, 20, 21, 22, and 24 of this Act are declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 43

### SENATE BILL NO. 2015

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide contingent appropriations; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purposes of defraying the expenses of the department of corrections and rehabilitation, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Adult services	\$128,150,266	\$15,505,602	\$143,655,868
Youth services	22,948,168	2,386,163	25,334,331
Deferred maintenance	0	1,372,519	1,372,519
Total all funds	\$151,098,434	\$19,264,284	\$170,362,718
Less estimated income	24,050,952	1,886,741	25,937,643
Total general fund	\$127,047,482	\$17,377,543	\$144,425,025
Full-time equivalent positions	711.29	24.00	735.29

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Youth correctional center security lighting	\$70,000	\$0
Deferred maintenance	1,725,391	1,372,519
Medical information system, equipment, and radios	1,764,000	0
Equipment	0	595,500
Total general fund	\$3,559,391	\$1,968,019

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. DEFERRED MAINTENANCE - TRANSFERS.** The department of corrections and rehabilitation is authorized to transfer from the deferred maintenance line to the other lines contained in section 1 of this Act amounts

necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION SHARE OF SALARY EQUITY POOL.** The office of management and budget shall provide at least twenty-nine percent of any general fund salary equity pool that is appropriated for salary equity increases for state employees, for the biennium beginning July 1, 2009, and ending June 30, 2011, to the department of corrections and rehabilitation. The department of corrections and rehabilitation may provide salary equity increases only to employees classified in pay grades one through fourteen.

**SECTION 5. CONTINGENT FUNDING - MISSOURI RIVER CORRECTIONAL CENTER REPAIRS.** Section 1 of this Act includes \$93,592 from the general fund for roof repairs for the dining and kitchen area at the Missouri River correctional center which may be spent only if the Missouri River correctional center is not relocated to the state penitentiary as part of the prison expansion project, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. CONTINGENT FUNDING - PROGRAMS AND PROJECTS.** Section 1 of this Act includes \$225,041 for a summer replacement boiler, \$18,928 for conversion of the energy management system from analog to digital, \$15,774 for heating and cooling equipment replacement, and \$160,000 for temporary housing of sexual offenders from the general fund which may be spent only to the extent that federal funds appropriated in section 9 of this Act are not available for these purposes.

**SECTION 7. HEART OF AMERICA CORRECTION AND TREATMENT CENTER - TREATMENT SERVICES PAYMENTS.** The department of corrections and rehabilitation shall distribute, in twenty-four equal payments, the sum of \$1,628,813 from the general fund appropriated in the adult services line item in section 1 of this Act to the heart of America correction and treatment center for inmate-related treatment services, for the biennium beginning July 1, 2009, and ending June 30, 2011. If the heart of America correction and treatment center does not accept a sufficient number of inmates to occupy at least ninety-six percent of the average daily treatment program bed count provided for in the contract for the first ten months of each year of the biennium, the department of corrections and rehabilitation shall reduce the monthly payments for the remaining two months of each year. The total reduction for the two months is the sum of the monthly calculation of the number of beds at ninety-six percent occupancy less the number of beds filled multiplied by the daily rate multiplied by the number of days in the month. The department of corrections and rehabilitation shall refer a sufficient number of inmates to the heart of America correction and treatment center to allow for the average daily treatment program bed count provided for in the contract to be fulfilled, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the department of corrections and rehabilitation, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Summer replacement boiler	\$225,041
(from funds available through department of commerce)	
Energy management system conversion	18,928
(from funds available through department of commerce)	
Heating and cooling equipment replacement	15,574
(from funds available through department of commerce)	
Temporary housing of sexual offenders	160,000
(from funds available through department of commerce)	
Crime victims assistance	542,000
Crime victims compensation	78,313
Total federal funds	\$1,039,856

The department of corrections and rehabilitation may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 9. EMERGENCY.** Section 8 of this Act is declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 44

### SENATE BILL NO. 2016

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses of job service North Dakota, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$33,000,430	\$2,565,816	\$35,566,246
Operating expenses	13,152,481	(1,927,677)	11,224,804
Capital assets	20,000	0	20,000
Grants	8,438,220	0	8,438,220
Workforce 20/20	1,500,000	12,491	1,512,491
Reed Act - Unemployment insurance computer modernization	7,300,000	(1,784,414)	5,515,586
Total all funds	<u>\$63,411,131</u>	<u>(\$1,133,784)</u>	<u>\$62,277,347</u>
Less estimated income	<u>61,664,171</u>	<u>(952,266)</u>	<u>60,711,905</u>
Total general fund	<u>\$1,746,960</u>	<u>(\$181,518)</u>	<u>\$1,565,442</u>
Full-time equivalent positions	308.00	(23.95)	284.05

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to job service North Dakota, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Workforce Investment Act programs	\$5,068,883
State unemployment insurance and employment services	2,984,613
Unemployment compensation benefit increase - Administration	<u>1,039,443</u>
Total federal funds	<u>\$9,092,939</u>

Job service North Dakota may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds

will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. APPROPRIATION - REED ACT FUNDS - UMEMPLOYMENT INSURANCE COMPUTER MODERNIZATION.** The special appropriation of \$5,515,586 in section 1 of this Act is from federal Reed Act funds made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernized unemployment insurance computer system, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. APPROPRIATION.** All federal funds, except funds under the federal American Recovery and Reinvestment Act of 2009, received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are appropriated for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. WORKFORCE 20/20 FUNDING.** Fifty percent of the workforce 20/20 funding in section 1 of this Act must be used for projects for new or expanding businesses in North Dakota.

**SECTION 6. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved May 1, 2009

Filed May 4, 2009

**CHAPTER 45**

**SENATE BILL NO. 2017**

(Appropriations Committee)  
 (At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the office of administrative hearings.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from income, to the office of administrative hearings for the purpose of defraying the expenses of the office of administrative hearings, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,268,446	(\$361,851)	\$906,595
Operating expenses	374,417	217,700	592,117
Total special funds	\$1,642,863	(\$144,151)	\$1,498,712
Full-time equivalent positions	8.00	(3.00)	5.00

Approved May 1, 2009  
 Filed May 4, 2009

## CHAPTER 46

### SENATE BILL NO. 2018

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide an appropriation to the office of management and budget; to provide a contingent appropriation; to provide exemptions; to provide for transfers; to provide a continuing appropriation; to provide for legislative council studies; to provide reports to the budget section; to provide for the establishment of a centers of excellence fund; to create and enact a new subsection to section 15-69-01, a new section to chapter 54-18, a new section to chapter 54-44.1, and a new section to chapter 54-60 of the North Dakota Century Code, relating to definitions relating to centers of excellence, an annual transfer from the state mill and elevator association, the establishment of a searchable database, and the division of workforce development's strategic plan and the North Dakota workforce development council; to amend and reenact subsection 1 of section 15-69-02, subsections 1, 2, and 3 of section 15-69-04, subsections 1, 3, 4, and 5 of section 15-69-05, subsection 2 of section 54-60-16, and section 54-60-17 of the North Dakota Century Code, relating to centers of excellence, the international business and trade office, and higher education internships and work experience opportunities; to provide an expiration date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of commerce for the purpose of defraying the expenses of the department of commerce, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,826,879	\$1,193,961	\$10,020,840
Operating expenses	14,308,688	169,584	14,478,272
Capital assets	25,000	0	25,000
Grants	48,774,748	19,611,310	68,386,058
Discretionary funds	1,450,127	(522,044)	928,083
Economic development initiatives	1,296,846	(1,110,000)	186,846
Agricultural products utilization	3,008,193	(471,563)	2,536,630
North Dakota trade office	1,500,000	564,000	2,064,000
Partner programs	50,000	1,972,044	2,022,044
Total all funds	\$79,240,481	\$21,407,292	\$100,647,773
Less special funds	55,758,516	13,907,954	69,666,470
Total general fund	\$23,481,965	\$7,499,338	\$30,981,303
Full-time equivalent positions	66.00	2.00	68.00

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the department of commerce, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Community development block grant program	\$1,300,000
Community services block grant	4,853,305
State energy program	24,585,000
Energy efficiency and conservation block grants	10,000,000
Weatherization assistance program	25,266,330
Emergency shelter grants	<u>2,590,000</u>
Total federal funds	\$68,594,635

The department of commerce may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

The department of commerce may accept federal fiscal stimulus funding for programs that continue into the biennium beginning July 1, 2011, and ending June 30, 2013. Any federal fiscal stimulus funding received in the 2011-13 biennium is not a part of the agency's 2013-15 base budget.

**SECTION 3. USE OF FEDERAL FISCAL STIMULUS FUNDS - ELECTRICAL GENERATORS.** The department of commerce shall use \$2,000,000 of the funding appropriated in section 2 of this Act for the purpose of establishing a grant program to assist in the purchase and installation of electrical generators that consume at least seventy-five percent of the gas from oil and gas well sites which would otherwise be flared or wasted, for the period beginning with the effective date of this Act and ending June 30, 2011. The funding is contingent upon approval from the United States department of energy of use of the funding for the grant program. Before making a grant from the program established by this section, the department of commerce shall obtain the recommendation of the oil and gas research program administered by the industrial commission regarding the application's technical accuracy and consistency with the oil and gas research program.

**SECTION 4. USE OF FEDERAL FISCAL STIMULUS FUNDS - BIOFUEL BLENDER PUMP GRANTS.** The department of commerce shall use up to \$1,000,000 of the funding appropriated in section 2 of this Act for biofuel blender pump grants.

**SECTION 5. APPROPRIATION - FEDERAL FISCAL STABILIZATION - OTHER GOVERNMENT SERVICES.** There is appropriated from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$400,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of establishing a searchable database of state expenditures as provided for in section 35 of this Act, for the

biennium beginning July 1, 2009, and ending June 30, 2011. Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriations in section 1 and section 12 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Transfer to development fund	\$3,000,000	\$0
Tax expenditure and business incentive reports	100,000	0
Transfer to workforce enhancement fund	0	1,000,000
Ethanol/biodiesel blender pumps and alternative energy	0	1,000,000
Promotion and marketing of U.S.S. North Dakota	0	100,000
Total general fund	<u>\$3,100,000</u>	<u>\$2,100,000</u>

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The department of commerce shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. AGRICULTURE FUEL TAX REFUNDS.** The estimated income line item in section 1 of this Act includes \$575,000 from refunds of tax for fuel used for agricultural purposes, to be used by the agricultural products utilization commission, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. EXEMPTION.** The amount appropriated for the agricultural products utilization commission in section 3 of chapter 18 of the 2007 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item for grants are available for grants during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 9. EXEMPTION.** The amount appropriated for the discretionary funds line item in section 3 of chapter 18 of the 2007 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. EXEMPTION.** The amount appropriated for internships contained in the economic development initiative line item in section 3 of chapter 18 of the 2007 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 11. TRADE OFFICE - MATCHING FUND REQUIREMENT.** The total North Dakota trade office special line and the general fund appropriation in section 1 of this Act include \$2,000,000 of funding relating to the North Dakota trade office. The department of commerce may spend sixty-two and one-half percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent that the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2009, and ending June 30, 2011. Matching funds may include money spent by businesses or

organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota trade office's export assistance program.

**SECTION 12. APPROPRIATION - TRANSFER - WORKFORCE ENHANCEMENT FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, which the office of management and budget shall transfer to the workforce enhancement fund for the purpose of assisting two-year colleges to respond to business and industry workforce training for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 13. TECHNOLOGY-BASED ENTREPRENEURSHIP GRANT PROGRAM - REPORT TO THE BUDGET SECTION.** The grants line item in section 1 of this Act includes the sum of \$1,000,000 from the general fund for a technology-based entrepreneurship grant program to be developed by the department of commerce, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of commerce shall report to the budget section in the third quarter of 2010 on the status of the technology-based entrepreneurship grant program, including an overview of the program and program expenditures.

**SECTION 14. TAX-EXEMPT PROPERTY - REPORT TO THE BUDGET SECTION.** During the 2009-10 interim, the department of commerce shall compile information identifying tax-exempt property by school district, including information on the related value of the property based on soil survey, insured value, or other means, and a categorization of the property by whether or not it produces revenue based on its use. The department of commerce shall report the information compiled to the budget section during the third quarter of 2010.

**SECTION 15. LEGISLATIVE INTENT - DIVISION OF TOURISM - LARGE TOURISM INFRASTRUCTURE GRANTS.** It is the intent of the sixty-first legislative assembly that the department of commerce division of tourism develop criteria for large tourism infrastructure grants and a method for setting funding priorities for such grants in future bienniums.

**SECTION 16. GRANT - LEWIS AND CLARK FOUNDATION.** The grants line item in section 1 of this Act includes the sum of \$1,500,000 from the general fund for providing a grant to the Lewis and Clark foundation, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of commerce may spend the funds appropriated from the general fund only to the extent matching funds have been secured from nonstate sources on a dollar-for-dollar basis. The funds may be used only for construction costs.

**SECTION 17. GRANT - THEODORE ROOSEVELT MEDORA FOUNDATION.** The grants line item in section 1 of this Act includes the sum of \$500,000 from the general fund for providing a grant to the Theodore Roosevelt Medora foundation, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of commerce may only spend the funds appropriated from the general fund to the extent matching funds of \$12,000,000 from nonstate sources have been secured by the foundation. The funds may be used only for construction costs.

**SECTION 18. LEGISLATIVE COUNCIL STUDY - TECHNOLOGY-BASED ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT BEST PRACTICES.** During the 2009-10 interim, the legislative council shall consider studying technology-based entrepreneurship and economic development best practices. The

study should include a review of best practices implemented by the department of commerce and the effectiveness of the department of commerce foundation. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 19. LEGISLATIVE COUNCIL STUDY - WORKFORCE SYSTEM INITIATIVE.** During the 2009-10 interim, the legislative council shall consider studying the state's system for addressing workforce needs through a workforce system initiative. The study should include a review of the alignment of taxpayer investment with programs, coordination of programs, and the North Dakota workforce strategic plan. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 20. LEGISLATIVE INTENT - ACCOUNTABILITY.** It is the intent of the sixty-first legislative assembly that the department of commerce establish and implement appropriate accountability requirements relating to grants provided to the Lewis and Clark foundation and the Theodore Roosevelt Medora foundation, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 21. APPROPRIATION - TRANSFER - CENTERS OF EXCELLENCE.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, which the office of management and budget shall transfer to the centers of excellence fund for the purpose of providing funding to centers of excellence, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 22. CONTINGENT APPROPRIATION - TRANSFER - CENTERS OF EXCELLENCE.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, which the office of management and budget shall transfer to the centers of excellence fund for the purpose of providing additional centers of excellence funding, for the biennium beginning July 1, 2009, and ending June 30, 2011. The office of management and budget may transfer this funding only if actual general fund revenues for the period from July 1, 2009, through December 1, 2009, exceed estimated general fund revenues for that period by at least \$5,000,000, as determined by the office of management and budget, based on the legislative estimates made at the close of the 2009 legislative session.

**SECTION 23. CENTERS OF EXCELLENCE ENHANCEMENT GRANTS.** The department of commerce shall use \$10,000,000 of the funds transferred to the centers of excellence fund in section 21 of this Act for centers of excellence enhancement grants during the biennium beginning July 1, 2009, and ending June 30, 2011. The centers of excellence enhancement grants may be made available to research universities under the control of the state board of higher education or nonprofit university-related foundations for use in infrastructure or enhancement of economic development and employment opportunities. Appropriate use of funds include a base realignment grant to enhance economic development and employment opportunities associated with the Grand Forks air force base resulting from action by the federal defense base closure and realignment commission; infrastructure and economic development projects or programs to accommodate growth in proximity to or at the Grand Forks air force base; and infrastructure and economic development projects or programs to enhance the capacity of a research university to interface and collaborate with private industry on research, development, demonstration, and commercialization of technology. The

commissioner of commerce shall develop application criteria, including local support criteria for requests relating to the Grand Forks air force base; review submitted applications; and recommend applications for approval to the centers of excellence commission. Centers of excellence enhancement grants made under this section are exempt from section 15-69-02, subsections 3 and 4 of section 15-69-04, and subsections 1, 3, and 4 of section 15-69-05.

**\* SECTION 24. CENTERS OF EXCELLENCE STATE TAX REVENUE IMPACT STUDY - REPORT.**

1. During the 2009-11 biennium, the state auditor, in consultation with the tax commissioner and the department of commerce, shall conduct a study of the state tax revenue impact of the centers of excellence program and shall calculate the direct and indirect impact of the program on state tax revenues. The study must include an analysis for each center of excellence of the actual matching funds received by source, actual number of private sector jobs created, and new private sector facilities opened as the result of the center. The study must be based on information available to the tax commissioner and the state auditor.
2. By August 1, 2010, the state auditor shall submit to the legislative council a report on the findings and results of the centers of excellence state tax revenue impact study.
3. The tax commissioner shall compile direct tax revenue and expenditure data and provide this data to the state auditor. Notwithstanding the confidentiality provisions contained in chapters 57-38 and 57-39.2, the tax commissioner shall provide the state auditor the information necessary to accomplish and effectuate the study required by this section. The tax commissioner may request the assistance of the department of commerce as necessary to compile this data.
4. The tax commissioner may establish the procedure and format by which the tax data will be provided to the state auditor. If additional information is needed by the state auditor to calculate the tax impact of the centers of excellence program, the state auditor may ask the department of commerce to contact those taxpayers determined necessary to effectuate the study required by this section.
5. Except as provided in subsection 6, the state auditor may establish the manner in which the centers of excellence impact data will be analyzed, organized, and presented in the report.
6. Confidential information the state auditor receives from the tax commissioner may not be divulged by the state auditor unless the information is in the aggregate and in a manner that will not divulge information specific to any taxpayer.

**SECTION 25. CENTERS OF EXCELLENCE BEST PRACTICE REVIEW.**

The department of commerce and the centers of excellence commission shall conduct a best practice review of the centers of excellence program by contracting with an appropriate entity with broad-based expertise in programs similar to North Dakota's centers of excellence program.

**SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of contracting with an entity to perform the review required in section 25 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 27. EXEMPTION - TRANSFER.** The amount appropriated for centers of excellence contained in sections 14 and 15 of chapter 18 of the 2007 Session Laws is not subject to section 54-44.1-11. The office of management and budget shall transfer any unexpended funds from these appropriations to the centers of excellence fund at the end of the 2007-09 biennium.

**SECTION 28. CENTERS OF EXCELLENCE - REPORTS.** The department of commerce shall report on the status of the centers of excellence program and the status of the centers of excellence fund to the budget section during the third quarter of 2010 and to the appropriations committees of the sixty-second legislative assembly.

**SECTION 29. Centers of excellence fund - Continuing appropriation.** The centers of excellence fund is a special fund in the state treasury. All moneys in the centers of excellence fund are appropriated to the department of commerce on a continuing basis for the purpose of implementing and administering this chapter. Interest earned on moneys in the fund must be credited to the fund.

**SECTION 30.** A new subsection to section 15-69-01 of the North Dakota Century Code is created and enacted as follows:

"Infrastructure" means new building construction or major building renovation. The term does not include a purchase of equipment or remodel of an existing building.

<sup>13</sup> **SECTION 31. AMENDMENT.** Subsection 1 of section 15-69-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a centers of excellence program relating to economic development. ~~The program must distinguish among center designations for awards designated to address commercialization and infrastructure needs.~~ Workforce may not be the primary need addressed by a center. Through the program the commission shall make funding award recommendations for commission-approved applications to the board, the foundation, the emergency commission, and the budget section of the legislative council. A center must be an institution of higher education under the control of the board or a nonprofit university-related or college-related foundation of an institution of higher education under the control of the board. In order to be considered for center designation, the institution of higher education or nonprofit foundation must be working in partnership with the private sector. ~~For an application that includes infrastructure to be considered for center designation, the application must provide detailed information~~

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<sup>13</sup> Section 15-69-02 was also amended by section 98 of House Bill No. 1436, chapter 482.

regarding how the future operational costs and maintenance costs related to the infrastructure will be provided and how the costs will not be provided from the general fund. In addition to any center designated under this chapter, the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation are centers.

**SECTION 32. AMENDMENT.** Subsections 1, 2, and 3 of section 15-69-04 of the North Dakota Century Code are amended and reenacted as follows:

1. The department of commerce shall provide center application forms, accept applications, review applications for completeness and compliance with board and commission policy, forward complete applications to the commission in accordance with guidelines established by the commission, and assist with preaward reviews and postaward monitoring as may be requested by the commission. No more than two applications per campus of an institution of higher education under the control of the board may be submitted to the department of commerce for each round of center funding.
2. The commission shall meet as necessary to review all complete applications; consider the potential need for independent, expert review of complete applications; approve or disapprove complete applications; make funding award recommendations for commission-approved proposed centers; direct the office of management and budget department of commerce to distribute funds to the centers; monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers.
3. In considering whether to approve or disapprove an application, the commission shall determine whether the applicant has conducted the due diligence necessary to put together a viable proposal, the commission shall determine whether the applicant has provided information in the application which clearly outlines how the matching fund requirement will be met, and the commission shall consider whether the center will:
  - a. Use university or college research to promote private sector job growth and expansion of knowledge-based industries or use university or college research to promote the development of new products, high-tech companies, or skilled jobs in this state;
  - b. Create high-value private sector employment opportunities in this state;
  - c. Provide for public-private sector involvement and partnerships;
  - d. Leverage other funding, including cash from the private sector;
  - e. Increase research and development activities that may involve federal funding from the national science foundation experimental program to stimulate competitive research;
  - f. Foster and practice entrepreneurship;

- g. Promote the commercialization of new products and services in industry clusters;
- h. Become financially self-sustaining; and
- i. Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.

<sup>14</sup> **SECTION 33. AMENDMENT.** Subsections 1, 3, 4, and 5 of section 15-69-05 of the North Dakota Century Code are amended and reenacted as follows:

1. A center shall use funds awarded under this chapter to enhance capacity; ~~enhance infrastructure~~; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds for infrastructure, to supplant funding for current operations or academic instructions, or to pay indirect costs.
3. Before the commission directs the ~~office of management and budget department of commerce~~ to distribute funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed under this chapter. Of the two dollars of matching funds, at least one dollar must be cash, of which at least fifty cents must be from the private sector. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The ~~noncash~~ matching funds may include a ~~combination of cash and~~ in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. In making funding recommendations and designation determinations, the commission, board, foundation, and budget section shall give major consideration to the portion of the matching funds provided in cash by the private sector.
4. The commission shall direct the ~~office of management and budget department of commerce~~ to distribute the funds awarded under this chapter in disbursements consistent with the center's budget and timeframe outlined in the approved award. The commission may not direct distribution of funds under this chapter if there are no private sector partners participating or if the statutorily required matching funds are not available.
5. If, before funds are distributed by the ~~office of management and budget department of commerce~~, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the ~~office of management and budget department of commerce~~ withhold all or a portion of any undistributed funds pending commission review of the changes.

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<sup>14</sup> Section 15-69-05 was also amended by section 98 of House Bill No. 1436, chapter 482.

**SECTION 34.** A new section to chapter 54-18 of the North Dakota Century Code is created and enacted as follows:

**Annual transfer.** Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural fuel tax fund.

**SECTION 35.** A new section to chapter 54-44.1 of the North Dakota Century Code is created and enacted as follows:

**Searchable database of expenditures.**

1. By June 30, 2011, the director of the budget shall develop and make publicly available an aggregate and searchable budget database website that includes the following information for the biennium ending June 30, 2009:
  - a. Each budget unit making expenditures.
  - b. The amount of funds expended.
  - c. The source of the funds expended.
  - d. The budget program of the expenditure.
  - e. Any other information determined relevant by the director of the budget.
2. The director of the budget shall include the name and city of the recipient of each expenditure in the budget database website after the director has completed implementation of a business intelligence component to the state's financial reporting system.
3. The director of the budget may not include in the database any information that is confidential or exempt under state or federal law.
4. The director of the budget may update the budget database website as new data becomes available. Each state agency shall provide to the director of the budget any data required to be included in the budget database website no later than thirty days after the data becomes available to the agency.
5. By January first of each even-numbered year, the director of the budget shall add data for the previous biennium to the budget database website. The director of the budget shall ensure that all data added to the budget database website remains accessible to the public for a minimum of ten years.
6. The budget database website may not redirect users to any other government website, unless the website has information from all budget units and each category of information required can be searched electronically by field in a single search.

**SECTION 36. AMENDMENT.** Subsection 2 of section 54-60-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner may designate a nonprofit corporation incorporated in this state that has the primary purpose of assisting North Dakota exporters or contract with a third party for the provision of services for the international business and trade office. If the commissioner designates a nonprofit corporation or contracts with a third party under this subsection, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.

<sup>15</sup> **SECTION 37. AMENDMENT.** Section 54-60-17 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-17. Division of workforce development - Higher education internships Internships, apprenticeships, and work experience opportunities.** The division of workforce development shall administer a program to increase use of higher education internships, apprenticeships, and work experience opportunities for higher education students and high school students enrolled in grade eleven or twelve. The primary focus of this program must be higher education internships in target industries. This program shall provide services to employers, communities, and business organizations to increase higher education internship, apprenticeship, and work experience opportunities. The department shall maintain records of the number of internship, apprenticeship, and work experience opportunities subsidized within each funding recipient which shall then constitute a base level for that funding recipient. The department in each subsequent biennium may only subsidize new or expanded internship, apprenticeship, and work experience opportunities above the base level for funding recipients.

**SECTION 38.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Division of workforce development - Annual reports - North Dakota workforce development council - Budget acceptance.**

1. Annually, job service North Dakota, the department of career and technical education, the department, and the state board of higher education each shall submit a report to the division of workforce development relating to the respective agency's current workforce initiatives and activities and that agency's plan for future workforce initiatives and activities. The division of workforce development shall consider these reports in preparing the consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction required under section 54-60-19.
2. Before November first of each even-numbered year, job service North Dakota, the department of career and technical education, the department, and the state board of higher education each shall present the respective agency's workforce-related budget initiatives for the upcoming biennium, including alignment of these initiatives with the consolidated biennial statewide strategic plan, to the North Dakota

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<sup>15</sup> Section 54-60-17 was also amended by section 13 of Senate Bill No. 2110, chapter 480.

workforce development council, created by governor's executive order 1995-01, dated January 3, 1996. The North Dakota workforce development council members shall consider potential areas for collaboration.

**SECTION 39. EXPIRATION DATE.** Section 36 of this Act is effective through June 30, 2011, and after that date is ineffective.

**SECTION 40. EMERGENCY.** Funding of \$900,000 in the operating expenses line item in section 1 of this Act relating to the operation intern program and section 2 of this Act are declared to be an emergency measure.

Approved May 8, 2009  
Filed May 11, 2009

\* Section 24 of Senate Bill No. 2018 was vetoed, see chapter 631.

## CHAPTER 47

### SENATE BILL NO. 2019

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state board for career and technical education; to provide for a state board of higher education study; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board for career and technical education for the purpose of defraying the expenses of the state board for career and technical education, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,575,692	\$594,338	\$4,170,030
Operating expenses	986,606	240,000	1,226,606
Grants	24,370,116	2,779,884	27,150,000
Grants - Postsecondary	357,452	0	357,452
Adult farm management	549,802	200,000	749,802
Workforce training	<u>3,000,000</u>	<u>0</u>	<u>3,000,000</u>
Total all funds	\$32,839,668	\$3,814,222	\$36,653,890
Less estimated income	<u>11,035,632</u>	<u>(272,750)</u>	<u>10,762,882</u>
Total general fund appropriation	\$21,804,036	\$4,086,972	\$25,891,008
Full-time equivalent positions	27.50	1.00	28.50

**SECTION 2. STATE BOARD OF HIGHER EDUCATION STUDY - WORKFORCE TRAINING REGIONS.** Before July 1, 2010, the state board of higher education shall conduct a study of the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state, including:

1. Effectiveness in meeting training needs of business and industry in the respective regions;
2. Responsiveness, results achieved, financial performance, and other performance measures; and
3. Review of an appropriate funding mechanism.

The study must involve representatives of the legislative assembly, higher education institutions, career and technical education, the workforce training boards established pursuant to chapter 52-08, and other representatives of business and industry. The findings of the study must be reported to the interim workforce committee, which shall report the findings and its recommendations, together with

any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The department of career and technical education may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds received and spent under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 48

### SENATE BILL NO. 2020

(Appropriations Committee)

(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide legislative intent; to provide for transfers; to provide an exemption; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm for the purpose of defraying the expenses of the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

##### Subdivision 1.

#### NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$41,528,035	\$5,563,454	\$47,091,489
Soil conservation committee	737,800	100,000	837,800
Total all funds	\$42,265,835	\$5,663,454	\$47,929,289
Less estimated income	23,863,722	2,065,155	25,928,877
Total general fund	\$18,402,113	\$3,598,299	\$22,000,412
Full-time equivalent positions	266.33	2.30	268.63

##### Subdivision 2.

#### NORTHERN CROPS INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$2,597,969	\$439,517	\$3,037,486
Less estimated income	1,479,657	118,608	1,598,265
Total general fund	\$1,118,312	\$320,909	\$1,439,221
Full-time equivalent positions	10.20	1.00	11.20

##### Subdivision 3.

#### UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$22,071,521	\$4,255,471	\$26,326,992
Less estimated income	20,861,681	3,875,518	24,737,199
Total general fund	\$1,209,840	\$379,953	\$1,589,793
Full-time equivalent positions	51.95	2.00	53.95

Subdivision 4.

MAIN RESEARCH CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Main research center	\$78,578,598	\$25,951,820	\$104,530,418
Deferred maintenance	0	450,000	450,000
Total all funds	\$78,578,598	\$26,401,820	\$104,980,418
Less estimated income	42,350,764	2,662,503	45,013,267
Total general fund	\$36,227,834	\$23,739,317	\$59,967,151
Full-time equivalent positions	347.39	5.00	352.39

Subdivision 5.

RESEARCH CENTERS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Dickinson research center	\$5,375,366	\$912,214	\$6,287,580
Central grasslands research center	2,267,148	293,454	2,560,602
Hettinger research center	2,440,826	554,329	2,995,155
Langdon research center	1,696,963	394,609	2,091,572
North central research center	3,124,334	849,618	3,973,952
Williston research center	3,134,044	(211,861)	2,922,183
Carrington research center	5,577,338	1,150,624	6,727,962
Total all funds	\$23,616,019	\$3,942,987	\$27,559,006
Less estimated income	13,014,511	2,177,305	15,191,816
Total general fund	\$10,601,508	\$1,765,682	\$12,367,190
Full-time equivalent positions	95.56	1.70	97.26

Subdivision 6.

AGRONOMY SEED FARM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Agronomy seed farm	\$1,230,162	\$45,076	\$1,275,238
Total special funds	\$1,230,162	\$45,076	\$1,275,238
Full-time equivalent positions	3.00	0.00	3.00

Subdivision 7.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$67,559,607	\$29,804,160	\$97,363,767
Grand total special funds	102,800,497	11,644,165	114,444,662
Grand total all funds	\$170,360,104	\$41,448,325	\$211,808,429

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Main research center greenhouse project	\$7,000,000	\$11,450,400
Carrington, North central, and Hettinger headquarters additions	907,750	0
Deferred maintenance pool	100,000	450,000
North central laboratory and greenhouse project	400,000	0

North Central equipment storage facility	300,000	0
Operating pool	750,000	925,000
Dickinson parking lot and landscaping capital project	350,000	350,000
Dickinson waste management facility capital project	351,000	0
Upper great plains transportation institute center for transportation study capital project	5,500,000	3,000,000
Northern crops institute extraordinary repairs	25,000	0
Beef research facility	0	2,612,400
North central, Williston, Langdon and Dickinson renovations/additions	0	2,937,200
Total all funds	<u>\$15,683,750</u>	<u>\$21,725,000</u>
Total special funds	<u>6,951,000</u>	<u>4,275,000</u>
Total general fund	<u>\$8,732,750</u>	<u>\$17,450,000</u>

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amount included in the grand total special funds appropriation line item in section 1 of this Act, any other income, including funds from federal acts, private grants, gifts, and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, gift, or donation, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS.** There is appropriated from federal fiscal stimulus funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$700,000, or so much of the sum as may be necessary, to the main research center for the purpose of installing a geothermal heating system in the main research center greenhouse project, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING - APPROVAL.** The main research center may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 for the construction of the third phase of the main research center greenhouse project, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Any federal funds received and spent under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 6. DEFERRED MAINTENANCE - TRANSFERS.** The main research center may transfer from the deferred maintenance line to the main research center line, contained in subdivision 4 of section 1 of this Act, amounts

necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 7. TRANSFER AUTHORITY.** Upon approval of the state board of agricultural research and education and appropriate branch research center directors, the director of the main research center may transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 1 of this Act. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 8. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** The board of higher education may adjust or increase full-time equivalent positions as needed for the entities in section 1 of this Act, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 2011-13 budget request.

**SECTION 9. UNEXPENDED GENERAL FUND - EXCESS INCOME.** Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 1 of this Act are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or revenues are available and may be expended by those entities, during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 10. PERMANENT OIL TAX TRUST FUND - DICKINSON RESEARCH CENTER - OPERATING POOL FUNDING.** The estimated income line item in subdivision 5 of section 1 of this Act includes \$925,000 from the permanent oil tax trust fund. This funding is available only for defraying the costs of operations of the Dickinson research center, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 11. LEGISLATIVE INTENT - BEEF SYSTEMS CENTER OF EXCELLENCE.** It is the intent of the sixty-first legislative assembly that the beef systems center of excellence authorized by the fifty-eighth legislative assembly has met the funding requirements as outlined in section 9 of chapter 20 of the 2003 Session Laws for collection of both federal and special funds by private contributions through the creation of the North Dakota agricultural innovation center and the capitalization for the creation of North Dakota natural beef, LLC, which was approved by the office of management and budget when it released \$800,000 to the North Dakota state university agricultural experiment station in 2006 pursuant to section 8 of chapter 20 of the 2003 Session Laws. It is also the intent of the sixty-first legislative assembly that this center is subject to requirements outlined in chapter 136 of the 2003 Session Laws and not those enacted later as a part of the center of excellence program administered by the department of commerce pursuant to chapter 15-69.

**SECTION 12. EXEMPTION.** The amounts appropriated for the center for transportation study, as contained in subdivision 3 of section 3 and the research greenhouse complex project, as contained in subdivision 4 of section 3, of chapter 20 of the 2007 Session laws, are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or related revenues are available and may be expended during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 13. EMERGENCY.** The appropriation for a capital project of \$3,000,000 from special funds in subdivision 3 and the appropriation for industrial hemp research of \$200,000 from special funds, for deferred maintenance of \$450,000 from the general fund, and for capital projects of \$17,000,000 from the general fund and \$350,000 from special funds in subdivision 4 of section 1 of this Act are declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

## CHAPTER 49

### SENATE BILL NO. 2021

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to provide a contingent appropriation; to provide for transfers; to provide for a legislative council study; to provide for a report; to provide a continuing appropriation; to amend and reenact section 15.1-02-18 of the North Dakota Century Code, relating to membership of the statewide longitudinal data system committee; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the information technology department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$37,682,129	\$4,882,814	\$42,564,943
Operating expenses	57,062,912	(1,854,362)	55,208,550
Capital assets	12,145,250	(174,504)	11,970,746
Center for distance education	6,302,457	(14,540)	6,287,917
Deferred maintenance	0	60,000	60,000
Statewide longitudinal data system	227,954	(25,512)	202,442
Educational technology council	946,267	28,719	974,986
EduTech	2,722,348	5,031,254	7,753,602
K-12 wide area network	4,066,519	1,910,451	5,976,970
Geographic information system	698,149	91,529	789,678
Criminal justice information sharing	1,200,706	2,408,533	3,609,239
Total all funds	<u>\$123,054,691</u>	<u>\$12,344,382</u>	<u>\$135,399,073</u>
Less estimated income	113,006,770	5,900,401	118,907,171
Total general fund	<u>\$10,047,921</u>	<u>\$6,443,981</u>	<u>\$16,491,902</u>
Full-time equivalent positions	306.20	22.00	328.20

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the information technology department, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Statewide longitudinal data system	\$2,263,883
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The information technology department may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 3. CONTINGENT GENERAL FUND APPROPRIATION - BUDGET SECTION APPROVAL.** If the federal funds appropriated under section 2 of this Act are not available to provide the sum of \$2,263,883, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,263,883, or so much of the sum as may be necessary, to the information technology department for costs associated with a statewide longitudinal data system, for the biennium beginning July 1, 2009, and ending June 30, 2011. The information technology department may spend the general fund moneys only to the extent that federal funds are not available to provide the \$2,263,883 appropriated under section 2 of this Act and subject to approval by the budget section.

**SECTION 4. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Criminal justice information sharing initiative	\$1,151,490	\$0
Geographic information system data acquisition	100,000	0
Kindergarten through grade 12 video grants	190,000	0
Online North Dakota studies resources and curriculum	170,000	0
Criminal justice information sharing projects	0	269,748
K-12 increased bandwidth	0	1,200,000
K-12 PowerSchool EduTech	0	353,600
Center for distance education software update	0	100,000
Total general fund	\$1,611,490	\$1,923,348

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The information technology department shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 5. DEFERRED MAINTENANCE - TRANSFERS.** The information technology department is authorized to transfer from the deferred maintenance line to the centers for distance education special line, contained in section 1 of this Act, amounts necessary to address extraordinary repair needs. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 6. TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between the salaries and wages, operating expenses, and capital assets line items in section 1 of this Act for the information technology department as may be requested by the chief

information officer as determined necessary for the development and implementation of information technology projects.

**SECTION 7. DEPARTMENT OF PUBLIC INSTRUCTION - STATEWIDE LONGITUDINAL DATA SYSTEM EXPENDITURES - APPROVAL.** The department of public instruction may spend only the federal funds appropriated in House Bill No. 1013 for costs associated with the statewide longitudinal data system upon approval of the expenditures by the information technology department, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. LEGISLATIVE COUNCIL STUDY - CRIMINAL JUSTICE INFORMATION SHARING INITIATIVE.** During the 2009-10 interim, the legislative council shall consider studying the value of the information technology department's criminal justice information sharing initiative. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 9. INFORMATION TECHNOLOGY DEPARTMENT OUTSOURCING - REPORT TO INFORMATION TECHNOLOGY COMMITTEE.** The information technology department shall report to the information technology committee on:

1. The department's current level of outsourcing of its information technology services.
2. Nonessential information technology services that could be considered for outsourcing.
3. The number of the department's employees who have resigned from the department to provide information technology consulting services in the private sector and the number of which have been rehired by the department.
4. The department's efforts to assist in the creation of North Dakota technology-related companies.

The information technology committee shall incorporate the information received in its report to the legislative council.

**SECTION 10. AMENDMENT.** Section 15.1-02-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-18. Statewide longitudinal data system committee - Membership - Powers and duties - Report to interim committee - Continuing appropriation.**

1. The statewide longitudinal data system committee consists of ~~the~~:
  - a. The chancellor of the board of higher education or chancellor's designee; ~~the~~
  - b. The superintendent of public instruction or superintendent of public instruction's designee; ~~the~~
  - c. The chief information officer or chief information officer's designee; ~~the~~

- d. The director of the department of career and technical education or the director's designee; ~~the~~
  - e. The director of job service North Dakota or the director's designee; ~~the director~~
  - f. The commissioner of ~~the department of~~ commerce or the ~~director's~~ commissioner's designee; ~~the~~
  - g. The director of the department of human services or the director's designee; ~~and one person~~
  - h. The director of the North Dakota educational technology council.
  - i. The director of the North Dakota council of educational leaders or the director's designee.
  - j. The director of the North Dakota workforce development council or the director's designee.
  - k. Two members of the legislative assembly appointed by the ~~governor~~ chairman of the legislative council.
2. The governor shall appoint the chair of the committee. The committee may appoint advisory committees that would serve in an advisory capacity to the committee.
- 2- 3. The committee shall ~~plan and propose~~ manage a longitudinal data system which:
- a. Provides for dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of longitudinal data.
4. The information technology department, at the direction of the committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities. The department and the committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system pursuant to the Family Educational Rights and Privacy Act (FERPA) [20 U.S.C. 1232g; 34 CFR 99].
- 3- 5. The committee shall ~~recommend policies, procedures, and guidelines to protect the privacy and security of personal information as provided by state and federal law~~ set policy and adopt rules relating to access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws. The committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets. The committee may

authorize studies to benefit and improve workforce training and education.

- 4- 6. The committee shall provide a report to the information technology committee, interim committee on education issues, and interim committee on economic development ~~prior to the sixty-first legislative assembly~~ on the status of the statewide longitudinal data system ~~plan~~. The report ~~shall~~ must include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance; ~~including recommendations concerning the long-term role and administration of the followup information in North Dakota for education and training program.~~
7. The committee may solicit and receive moneys from public and private sources and those funds are appropriated on a continuing basis for the support of the longitudinal data system.
8. The information technology department shall provide staff and other necessary support to the committee.

**SECTION 11. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 50****SENATE BILL NO. 2022**

(Appropriations Committee)  
 (At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state seed department; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the state seed department for the purpose of defraying the expenses of the state seed department, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total special funds	\$6,166,218	\$639,277	\$6,805,495
Full-time equivalent positions	30.00	0.00	30.00

**SECTION 2. EMERGENCY.** The appropriation of \$200,000 for construction of a storage facility included in section 1 of this Act is declared to be an emergency measure.

Approved May 1, 2009  
 Filed May 5, 2009

**CHAPTER 51**

**SENATE BILL NO. 2023**

(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents; and to create and enact a new section to chapter 54-61 of the North Dakota Century Code, relating to contracting for public defenders.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Commission on legal counsel for indigents	\$11,210,696	\$209,669	\$11,420,365
Less special funds	1,700,705	249,512	1,950,217
Total general fund	\$9,509,991	(\$39,843)	\$9,470,148
Full-time equivalent positions	29.00	1.00	30.00

**SECTION 2.** A new section to chapter 54-61 of the North Dakota Century Code is created and enacted as follows:

**Contract services.** The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its biennial caseload.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 52**

**SENATE BILL NO. 2024**  
 (Appropriations Committee)  
 (At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the racing commission; to create and enact two new sections to chapter 53-06.2 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to amend and reenact sections 53-06.2-02, 53-06.2-03, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14, 53-06.2-15, and 53-06.2-16 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to provide for a report to the legislative council; to provide for transition; and to provide an effective date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the racing commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Racing commission	\$407,290	(\$82,290)	\$325,000
Less estimated income	286,698	(256,698)	30,000
Total general fund	\$120,592	\$174,408	\$295,000
Full-time equivalent positions	2.00	0.00	2.00

\* **SECTION 2. AMENDMENT.** Section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.**

1. A North Dakota racing commission is established ~~consisting in the office of the agriculture commissioner.~~ The commission consists of the chairman and four other members appointed by the governor agriculture commissioner. One of the members must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian paint horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves for the unexpired portion of the term and may be reappointed. The terms of the commissioners must be staggered so that one term expires

each July first. At the expiration of the five-year term of each incumbent member of the commission, the ~~governor~~ agriculture commissioner shall appoint a new member to the commission.

2. A ~~person~~ An individual is ineligible for appointment to the commission if that ~~person~~ individual has not been a resident of this state for at least two years before the date of appointment. A ~~person~~ An individual is also ineligible if that ~~person~~ individual is not of such character and reputation as to promote public confidence in the administration of racing in this state. A ~~person~~ An individual who has a financial interest in racing cannot be a member of the commission ~~and cannot be employed by the commission~~ without full disclosure of the financial interest to the agriculture commissioner, the attorney general, and the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission ~~or from employment with the commission~~. For purposes of this section, a ~~person~~ an individual has a financial interest in racing if that ~~person~~ individual has an ownership interest in horses running at live or simulcast meets conducted or shown in this state subject to this chapter or rules of the commission agriculture commissioner, is required to be licensed under this chapter or the rules of the commission agriculture commissioner or attorney general, or who derives any direct financial benefit from racing, individually or by or through an entity or other person, as regulated by this chapter or the rules of the ~~commission~~ agriculture commissioner or attorney general.
3. Commission members are entitled to ~~seventy-five dollars per day for the same~~ compensation; and mileage and expense reimbursement as ~~allowed to other state employees~~ provided for members of committees of the legislative council under section 54-35-10.

\* **SECTION 3. AMENDMENT.** Section 53-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-03. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel.**

1. The ~~commission~~ shall agriculture commissioner may appoint a director of racing. The ~~commission~~ shall agriculture commissioner may establish the director's qualifications and salary.
2. The director shall devote such time to the duties of the office as the commission agriculture commissioner may prescribe. The director is ~~the executive officer of the commission and shall enforce the rules and orders of the commission~~. The director shall perform ~~other~~ duties the commission agriculture commissioner prescribes.
3. The director may employ other ~~persons~~ individuals as authorized by the commission agriculture commissioner.

\* **SECTION 4. AMENDMENT.** Section 53-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-04. Duties of commission and attorney general.**

1. The commission shall:

1. a. Provide for racing ~~under the certificate system.~~
2. b. Set racing dates.
3. c. Adopt rules for effectively preventing the use of any unauthorized substance, compound items, or combinations of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racehorse; ~~unless specifically authorized by the commission.~~
4. ~~Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and equipment at all races held under the certificate system.~~
5. d. Adopt rules governing, restricting, or regulating bids on licensees' concessions and leases on equipment.
6. e. Consider all proposed extensions, additions, or improvements to the buildings, stables, or tracks on property owned or leased by a licensee.
7. f. Exclude from racetracks ~~or simulcast pari-mutuel wagering facilities~~ any person who violates any rule ~~of the commission adopted to implement this chapter~~ or any law.
8. g. Determine the cost of inspections performed under subsection 3 of section 53-06.2-05 and require the licensee to pay that cost.
9. h. Report biennially to the legislative council regarding the operation ~~of the commission racing under this chapter.~~
10. i. Provide notice to the North Dakota horsemen's council of meetings held by the commission and permit the North Dakota horsemen's council to participate in the meetings through placement of items on the agenda.
14. j. Complete, distribute, and post on the commission's web site the minutes of each commission meeting within thirty days of that meeting or before the next meeting of the commission, whichever occurs first.
2. The attorney general shall:
  - a. Provide for pari-mutuel wagering on racing, simulcast, and account wagering.
  - b. Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and equipment at all races held under the certificate system.
  - c. Exclude from simulcast or account wagering facilities any person who violates any rule adopted to implement this chapter or any law.

\* **SECTION 5.** A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

**Powers of commission.** The commission may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which the financial records are to be kept.
2. Investigate the operations of any licensee and enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter and to discover and seize any evidence of noncompliance.
3. License all participants in racing and require and obtain information the commission determines necessary from license applicants. The commission may obtain a statewide and nationwide criminal history record check from the bureau of criminal investigation for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.
4. Receive moneys from the North Dakota horse racing foundation for deposit in the purse fund, the breeders' fund, or the racing promotion fund in accordance with subsection 6 of section 53-06.2-11.
5. Adopt rules to implement the laws concerning racing and the administration of racing.

\* **SECTION 6. AMENDMENT.** Section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-05. Powers of commission attorney general.** The ~~commission~~ attorney general may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records are to be kept.
2. Investigate the operations of any licensee and enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter, and to discover and seize any evidence of noncompliance.
3. ~~Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and horses that are lawfully on a racetrack.~~
4. License all participants in the racing and simulcast pari-mutuel wagering industry and require and obtain information the ~~commission deems~~ attorney general determines necessary from license applicants. ~~Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting pari-mutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. The~~ commission may obtain a statewide and nationwide criminal history

record check from the bureau of criminal investigation for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.

- 5- ~~Receive moneys from the North Dakota horse racing foundation for deposit in the purse fund, breeders' fund, or racing promotion fund in accordance with subsection 6 of section 53-06.2-11.~~
- 6- 4. Adopt additional rules for the administration, implementation, and regulation of pari-mutuel wagering activities conducted pursuant to this chapter. The ~~commission attorney general~~ shall deposit any fees collected under authority of this subsection in the ~~racing commission attorney general's~~ operating fund. Subject to legislative appropriation, the ~~commission attorney general~~ may spend the fees for operating costs ~~of the commission~~ under this chapter.

\* **SECTION 7.** A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

**License and fees.**

1. Each license issued to conduct pari-mutuel wagering must describe the place, track, or racecourse at which the pari-mutuel wagering is to be conducted. Pari-mutuel wagering authorized under this chapter may be held during the hours approved by the attorney general and within the hours permitted by state law.
2. The attorney general may charge a license fee to conduct pari-mutuel wagering.
3. Each applicant for a license to conduct pari-mutuel wagering shall give bond payable to this state with good security as approved by the attorney general. The bond must be in the amount the attorney general determines will adequately protect the amount normally due and owing to this state.
4. The attorney general may grant licenses to service providers, totalizator companies, site operators, other organizations conducting pari-mutuel wagering, employees of service providers, totalizator companies, site operators, and other organizations conducting pari-mutuel wagering, and other persons as determined by the attorney general.
5. The attorney general may establish the period of time for which licenses issued under this chapter are valid.
6. Subject to legislative appropriation, the attorney general may spend the fees for operating costs of the attorney general.

\* **SECTION 8. AMENDMENT.** Section 53-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-10. Certificate system - Rules.** The certificate system allows a licensee to receive money from any ~~person~~ individual present at a live horse race, simulcast horse race, ~~or simulcast dog race,~~ or account wagering facility who desires

to bet on any entry in that race. ~~A person~~ An individual betting on an entry to win acquires an interest in the total money bet on all entries in the race, in proportion to the amount of money bet by that ~~person~~ individual, under rules adopted by the ~~commission~~ attorney general. The licensee shall receive the bets and for each bet shall issue a certificate to the bettor on which is at least shown the number of the race, the amount bet, and the number or name of the entry selected by the bettor. The ~~commission~~ attorney general may adopt rules for place, show, quinella, combination, or other types of betting usually connected with racing.

\* **SECTION 9. AMENDMENT.** Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-10.1. Simulcast wagering.** In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, simulcast pari-mutuel wagering may be conducted in accordance with this chapter or rules adopted by the ~~commission~~ attorney general to implement this chapter in accordance with ~~chapter 28-32~~. Any organization qualified under section 53-06.2-06 to ~~conduct racing~~ may make written application to the ~~commission~~ attorney general for the conduct of simulcast pari-mutuel wagering on races held at licensed racetracks inside the state or racetracks outside the state, or both. ~~Licensure of service~~ Service providers, totalizator companies, site operators, or organizations applying to conduct or conducting simulcast or account wagering must ~~be approved~~ obtain a license approved by the attorney general. ~~The attorney general may not grant a license denied by the commission.~~ Notwithstanding any other provision of this chapter, the ~~commission~~ attorney general may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Anytime that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the ~~commission~~ attorney general, may adopt the take-out of the host jurisdiction or facility. The ~~commission~~ attorney general may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction and may allow pari-mutuel pools in other states to be combined with pari-mutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or international combined wagering pool other than amounts wagered within this jurisdiction. The certificate system also permits pari-mutuel wagering to be conducted through account wagering. As used in this section, "account wagering" means a form of pari-mutuel wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. An account wager made on an account established in this state may only be made through the licensed simulcast service provider approved by the attorney general and ~~authorized by the commission~~ to operate the simulcast pari-mutuel wagering system under the certificate system. ~~The attorney general may not grant a license denied by the commission.~~ An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the ~~commission~~ attorney general. Breakage for interstate or international combined wagering pools must be calculated in accordance with the statutes or rules of the host jurisdiction and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

\* **SECTION 10. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. For wagering on live horse racing and simulcast wagering:
  - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two and one-half~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For account wagering:
  - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
    - (1) ~~Before eleven million dollars is wagered in all pari-mutuel wagering in each biennium; of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:~~
      - (a) ~~Two percent to the state treasurer to be deposited in the general fund.~~
      - (b) ~~One-half of one percent to the commission to be deposited in the breeders' fund.~~
      - (c) ~~One-half of one percent to the commission to be deposited in the purse fund.~~

- (d) ~~One-half of one percent to the commission to be deposited in the racing promotion fund.~~
- (2) ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of~~ ~~Of~~ ~~the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:~~
  - (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
  - (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
  - (c) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
  - (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. ~~In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered.~~
  - (1) ~~Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:~~
    - (a) ~~Two and one-half percent to the state treasurer to be deposited in the general fund.~~
    - (b) ~~One-half of one percent to the commission to be deposited in the breeders' fund.~~
    - (c) ~~One-half of one percent to the commission to be deposited in the purse fund.~~
    - (d) ~~One-half of one percent to the commission to be deposited in the racing promotion fund.~~
  - (2) ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of~~ ~~Of~~ ~~the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:~~
    - (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
    - (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
    - (c) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.

- (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
3. For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.
  4. The licensee conducting wagering on live racing, simulcast wagering, or account wagering shall retain all other money in the pari-mutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
  5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting pari-mutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under section 53-06.1-11.1.
  6. The commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing promotion fund for the payment of the commission's operating expenses.

\* **SECTION 11. AMENDMENT.** Section 53-06.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-12. Audits and investigations by state auditor.** On request of the commission or attorney general, the state auditor shall conduct audits and investigate the operations of any licensee. The commission or attorney general shall reimburse the state auditor for all services rendered.

\* **SECTION 12. AMENDMENT.** Section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-13. Duty of attorney general to participate in certain hearings and to conduct investigations - ~~Employment of private counsel by commission.~~**

1. The attorney general shall represent the state in all hearings ~~before the commission~~ and shall prosecute all criminal proceedings arising from

violations of this chapter. The attorney general may require payment for any services rendered to the racing commission. Payment for the services must be deposited in the attorney general's operating fund. ~~The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly. All hearings under this chapter must be conducted by the office of administrative hearings under chapter 28-32.~~

2. ~~a.~~ The attorney general may audit and investigate service providers, totalizator companies, site operators, or organizations applying to conduct or conducting pari-mutuel wagering. The attorney general may:
  - (1) a. Inspect all sites in which pari-mutuel wagering is conducted.
  - (2) b. Inspect all pari-mutuel wagering equipment and supplies.
  - (3) c. Seize, remove, or impound any pari-mutuel equipment, supplies, or books and records for the purpose of examination and inspection.
  - (4) d. Inspect, examine, photocopy, and audit all books and records.
- ~~b.~~ ~~The commission shall reimburse the attorney general for auditing and investigation. Payment for auditing and investigation must be deposited in the attorney general's operating fund.~~

\* **SECTION 13. AMENDMENT.** Section 53-06.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-14. Denial, suspension, and revocation of licenses - Reasons.** The commission or attorney general may deny, suspend, or revoke licenses ~~under the certificate system and privileges granted by it, and it may terminate racing privileges issued by each respective official~~ for just cause. Actions constituting just cause include:

1. Any action or attempted action by a person contrary to any law.
2. Corrupt practices, which include:
  - a. Prearranging or attempting to prearrange the order of finish of a race.
  - b. Failing to properly pay winnings to a bettor or to properly return change to a bettor purchasing a ticket.
  - c. Falsifying or manipulating the odds on any entrant in a race.
3. Any violation of the rules of racing adopted by the commission or attorney general under this chapter.
4. Willful falsification or misstatement of fact in an application for racing or pari-mutuel privileges.
5. Material false statement to a racing official, the attorney general, or to the commission.

6. Willful disobedience of a ~~commission an~~ order of the commission or attorney general or of a lawful order of a racing official other than a commission member.
7. Continued failure or inability to meet financial obligations ~~connected with racing meets~~.
8. Failure or inability to properly maintain a racetrack.

\* **SECTION 14. AMENDMENT.** Section 53-06.2-15 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-15. Revocation, suspension, fine - Procedure.** The commission or attorney general, on proof of violation by a licensee, its agents or employees, of this chapter or any rule adopted by the commission ~~may~~ or attorney general to implement this chapter, on reasonable notice to the licensee and after giving the licensee an opportunity to be heard, may fine the licensee or revoke or suspend the license. If the license is revoked, the licensee is not eligible to receive another license within twelve months from the date of revocation. Every decision or order of the commission or attorney general must be made in writing and filed ~~with the director~~ for preservation as a permanent record of the commission or attorney general. ~~The decision must be signed by the chairman, attested by the director, and dated.~~

\* **SECTION 15. AMENDMENT.** Section 53-06.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-16. Prohibited acts - Penalties.**

1. No person may conduct a pari-mutuel ~~horse race~~ wagering or racing unless that person is licensed by the commission or attorney general. Violation of this subsection is a class A misdemeanor.
2. No person may prearrange or attempt to prearrange the order of finish of a race. Violation of this subsection is a class C felony.

\* **SECTION 16. REPORT TO LEGISLATIVE COUNCIL.** The racing commission, in its biennial report to the legislative council under section 53-06.2-04, shall include information and recommendations for legislation which address the issue of the liability of charitable organizations that receive and disburse moneys handled through account wagering.

\* **SECTION 17. TRANSITION.** Any member of the North Dakota racing commission who is a member of the commission as of June 30, 2011, and whose term expires after July 1, 2011, may serve the remainder of that member's unexpired term.

\* **SECTION 18. EFFECTIVE DATE.** Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, and 15 of this Act become effective on July 1, 2011.

Approved May 18, 2009  
Filed May 19, 2009

\* Sections 2 through 18 of Senate Bill No. 2024 were vetoed, see chapter 635.

**CHAPTER 53****SENATE BILL NO. 2025**

(Appropriations Committee)  
(At the request of the Governor)

AN ACT providing an appropriation for defraying the expenses of the veterans' home for the purpose of building a new facility; to amend and reenact sections 1 and 2 of chapter 55 of the 2007 Session Laws, relating to the veterans' home construction project; to provide an exemption; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$7,944,991 or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$2,643,904 or so much of the sum as may be necessary, to the veterans' home for the purpose of building a new facility, for the period beginning with the effective date of this Act, and ending June 30, 2011.

**SECTION 2. AMENDMENT.** Sections 1 and 2 of chapter 55 of the 2007 Session Laws are amended and reenacted as follows:

**SECTION 1. CONTINGENT APPROPRIATION - VETERANS' HOME CONSTRUCTION PROJECT.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$6,483,226, or so much of the sum as may be necessary, and \$12,040,278 from federal funds, to ~~demolish the existing veterans' home and to~~ build a new structure. The appropriation from the permanent oil tax trust fund is to only be made available upon the veterans' home obtaining approval for a federal state home construction grant from the federal department of veterans' affairs. ~~The state share of the veterans' home construction project authorized in this section is limited to thirty-five percent of the total project cost or \$6,483,226, whichever is less.~~ The veterans' home shall ensure the appropriate engineering studies are conducted prior to construction of the new facility.

**SECTION 2. APPROPRIATION - VETERANS' HOME CONSTRUCTION PROJECT - ADDITIONAL BED CAPACITY - BOND ISSUANCE AUTHORIZATION.** The industrial commission, acting as the North Dakota building authority, shall arrange through the issuance of evidences of indebtedness under chapter 54-17.2 for the biennium beginning July 1, ~~2007~~ 2009, and ending June 30, ~~2009~~ 2011, for project costs associated with expanding the veterans' home construction project from the 121-bed capacity facility, as provided for in section 1 of this Act, to a 150-bed facility declared to be in the public interest. The industrial commission shall issue evidences of indebtedness under this section with the condition that repayments need not begin until July 1, ~~2009~~ 2011. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, ~~2009~~ 2011, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and comply with any covenants entered into before that date. The proceeds of the evidences of indebtedness and other available funds in the amount of \$2,575,152 are appropriated to the veterans' home for this project. Non-general fund sources must be used for the retirement of the evidences of indebtedness for the costs associated with this project.

**SECTION 3. EXEMPTION.** The amounts appropriated for the purpose of building a new facility, as contained in section 1 of this Act and section 1 of chapter 55 of the 2007 Session Laws are not subject to the provisions of section 54-44.1-11. Any unexpended funds from the amount appropriated by the 2007 and 2009 legislative assemblies for this purpose are available during the biennium beginning July 1, 2009, and ending June 30, 2011, for the purpose of building a new facility.

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

Approved February 27, 2009  
Filed February 27, 2009

**CHAPTER 54****SENATE BILL NO. 2030**

(Legislative Council)  
(Correctional Facility Review Committee)

AN ACT providing an appropriation to the department of corrections and rehabilitation for the renovation and expansion project at the state penitentiary; to provide for a prison construction review committee; to provide legislative intent; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$19,465,804, or so much of the sum as may be necessary, and from the state penitentiary land fund, the sum of \$44,534,196, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, for the purpose of completing the renovation and expansion of the state penitentiary project, including replacement of the east cellhouse and construction of new health services, reception and entry, segregation housing, central control facilities, and the secondary road project, for the period beginning with the effective date of this Act and ending June 30, 2011.

**\* SECTION 2. PRISON CONSTRUCTION REVIEW COMMITTEE - DUTIES.**

The legislative council shall appoint a three-member prison construction review committee to receive and review information relating to the prison construction project beginning with the effective date of this Act and ending June 30, 2011. The committee shall monitor the status of the project to determine that the department of corrections and rehabilitation does not significantly change or expand the penitentiary expansion and renovation project beyond what was approved by the sixty-first legislative assembly unless the legislative assembly, or the budget section of the legislative council, if the legislative assembly is not in session, approves the change or expansion of the project, or any additional expenditures for the project. The committee shall operate according to the rules and procedures governing the operation of other legislative council committees.

**SECTION 3. LEGISLATIVE INTENT - MISSOURI RIVER CORRECTIONAL CENTER RELOCATION.** It is the intent of the sixty-first legislative assembly that the sixty-second legislative assembly provide funding from the general fund for relocation of the Missouri River correctional center to the state penitentiary site.

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

Approved May 11, 2009  
Filed May 11, 2009

\* Section 2 of Senate Bill No. 2030 was vetoed, see chapter 634.

**CHAPTER 55****SENATE BILL NO. 2047**

(Legislative Council)  
(Public Safety Committee)

AN ACT to provide an appropriation to the state department of health for providing emergency medical training grants to rural law enforcement agencies.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$128,400, or so much of the sum as may be necessary, to the state department of health for the purpose of providing emergency medical training grants to rural law enforcement agencies for licensed officers who choose to become licensed first responders, for the biennium beginning July 1, 2009, and ending June 30, 2011. For the purposes of this section, rural law enforcement agencies mean police departments of cities with a population under 6,500 and county sheriffs' offices. Any agency that accepts funds under this section shall maintain the positions as trained first responders. If the training requirement is eliminated, the agency shall return the funds to the department.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 56****SENATE BILL NO. 2075**

(Appropriations Committee)  
(At the request of the Veterans' Home)

AN ACT to provide an appropriation to the state veterans' home for improvements associated with the new veterans' home and a geothermal heating system; to provide a contingent appropriation; to provide for a report to the budget section; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the state veterans' home for the purpose of exterior finishing around the new veterans' home, including landscaping, moving a three-stall garage, building a maintenance building, mill, overlay, curb and gutter work, and street lighting, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS.** There is appropriated from federal fiscal stimulus funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$3,039,414, or so much of the sum as may be necessary, to the veterans' home for the purpose of installing a geothermal heating system in the new veterans' home facility, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 3. CONTINGENT APPROPRIATION.** If federal funds appropriated under section 2 of this Act are not available to provide the sum of \$3,039,414, there is appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,039,414, or so much of the sum as may be necessary, to the veterans' home for the purpose of installing a geothermal heating system in the new veterans' home facility, for the period beginning with the effective date of this Act and ending June 30, 2011. The veterans' home may spend the general fund moneys appropriated under this section only to the extent that federal funds appropriated in section 2 of this Act are not available for these purposes.

**SECTION 4. REPORT TO BUDGET SECTION - VETERANS' HOME EXTERIOR FINISHING CONSTRUCTION PROJECT.** The state veterans' home shall report to the budget section regarding the veterans' home exterior finishing construction projects during the biennium beginning July 1, 2009, and ending June 30, 2011. The report must be made at the first budget section meeting scheduled after the exterior finishing construction projects, appropriated in section 1 of this Act, are complete.

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

Approved April 27, 2009  
Filed April 27, 2009

**CHAPTER 57****SENATE BILL NO. 2155**

(Senator Oehlke)

(Representatives D. Johnson, Hofstad)

AN ACT to provide an appropriation for grants to assist certain institutions of higher education with the cost of interpreters and real-time captioning for students who are deaf or hard of hearing.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the North Dakota school for the deaf for the purpose of providing grants to assist institutions under the control of the state board of higher education with the cost of interpreters and real-time captioning for students who are deaf or hard of hearing, for the biennium beginning July 1, 2009, and ending June 30, 2011. Moneys appropriated under this section are not subject to section 54-44.1-11.

**SECTION 2. USE OF FUNDS.**

1. The school for the deaf shall develop a formula to determine the grant amount for which an institution is eligible. The formula must be based on a uniform hourly reimbursement.
2. To obtain a grant under section 1 of this Act, an institution shall submit to the school for the deaf, at the time and in the manner directed by the school, invoices showing the amount expended for interpreters and real-time captioning for students who are deaf or hard of hearing.
3. The school for the deaf may not distribute more than fifty percent of the amount appropriated during the first year of the biennium.
4. If any grant moneys remain undistributed at the end of the biennium, the school for the deaf shall provide additional prorated grants to institutions that incurred, during the biennium, hourly expenses in excess of the formula reimbursement level.
5. At the request of an institution under the control of the state board of higher education, the school for the deaf shall consult with the institution and provide advice regarding the provision of services most appropriate to meet a student's needs.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 58****SENATE BILL NO. 2178**

(Senators Wardner, Krebsbach, Robinson)  
 (Representatives D. Johnson, Martinson, Williams)

AN ACT to provide an appropriation to the office of management and budget for community service supervision grants.

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

**SECTION 1. APPROPRIATION - COMMUNITY SERVICE SUPERVISION GRANTS - FUNDING ALLOCATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$375,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing community service supervision grants, for the biennium beginning July 1, 2009, and ending June 30, 2011. The office of management and budget shall distribute the grant funds on an annual basis on August first of each year of the 2009-11 biennium to the North Dakota community corrections association regions as follows:

Barnes County	\$9,198
Bismarck (urban)	21,151
Bismarck (rural)	13,467
Devils Lake	10,965
Dickinson	13,031
Fargo	25,248
Grand Forks	20,628
Jamestown	14,310
Minot	16,453
Richland County	10,095
Rugby	11,934
Wells County	8,237
Williston	<u>12,783</u>
Total annual allocation	\$187,500

Approved May 7, 2009

Filed May 19, 2009

**CHAPTER 59****SENATE BILL NO. 2230**  
(Senators Bakke, Fischer, Triplett)  
(Representatives Dahl, Ekstrom, Nelson)

AN ACT to provide an appropriation to the state department of health for providing grants to domestic violence sexual assault organizations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS.**

There is appropriated from federal stimulus funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing grants and related administrative costs to domestic violence sexual assault organizations as defined in North Dakota Century Code section 14-07.1-01, for the biennium beginning July 1, 2009, and ending June 30, 2011. Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 2. APPROPRIATION - DOMESTIC VIOLENCE GRANTS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the state department of health for providing grants and related administrative costs to domestic violence sexual assault organizations as defined in North Dakota Century Code section 14-07.1-01, for the biennium beginning July 1, 2009, and ending June 30, 2011. Grants must be awarded based on a funding system developed by the state department of health with input from the North Dakota council on abused women's services.

Approved April 30, 2009  
Filed May 4, 2009

**CHAPTER 60****SENATE BILL NO. 2305**

(Senators Erbele, Fischer, Robinson)  
(Representatives Brandenburg, Kretschmar, Onstad)

AN ACT to provide an appropriation to the state water commission for a Beaver Bay embankment feasibility study.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$342,000, or so much of the sum as may be necessary, to the state water commission for the purpose of conducting a Beaver Bay embankment feasibility study, for the biennium beginning July 1, 2009, and ending June 30, 2011. The embankment feasibility study is to include a downstream component and a highway embankment component.

**SECTION 2. BEAVER BAY EMBANKMENT FEASIBILITY STUDY - USE OF FUNDS.** Of the funding provided in section 1 of this Act, no more than \$100,000 may be spent prior to the acquisition of applicable licenses and authorizations from the federal army corps of engineers.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 61

### SENATE BILL NO. 2342

(Senators Taylor, Christmann, Klein)  
(Representatives Brandenburg, Froelich, Onstad)

AN ACT providing an appropriation for defraying the expenses associated with the control of Johne's disease (*Mycobacterium avium* ss.paratuberculosis) in North Dakota; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state board of animal health to disburse to livestock producers participating in the North Dakota voluntary Johne's disease herd status program to defray expenses incurred in the testing and control of Johne's disease in livestock and to provide for the education of producers and veterinarians concerning the testing and control of Johne's disease for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Testing assistance	\$150,000
Technical assistance	55,500
Education	<u>40,000</u>
Total general fund appropriation	\$245,500

**SECTION 2. LEGISLATIVE COUNCIL STUDY - JOHNE'S DISEASE.** During the 2009-10 interim, the legislative council shall consider studying the impact of Johne's disease on livestock producers in the state. The study, if conducted, may include a review of the need to quarantine affected livestock herds to control the spread of disease. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 62****SENATE BILL NO. 2393**

(Senators Taylor, Horne, Klein)  
(Representatives DeKrey, Nelson, Schmidt)

AN ACT to provide an appropriation to the department of emergency services for emergency snow removal grants; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the department of emergency services for the purpose of providing emergency snow removal grants to counties and cities, for the period beginning January 1, 2009, and ending June 30, 2009.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 63****SENATE BILL NO. 2412**

(Senators Holmberg, Fischer)  
(Representative Svedjan)

AN ACT to provide an appropriation to the state department of health for providing a grant to the North Dakota fetal alcohol syndrome center; and to provide a report to the legislative council.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$369,900, or so much of the sum as may be necessary, to the state department of health for the purpose of providing a grant to the North Dakota fetal alcohol syndrome center, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 2. ACCOUNTABILITY REPORT TO LEGISLATIVE COUNCIL.** The North Dakota fetal alcohol syndrome center shall provide an accountability report with respect to the use of funds granted under section 1 of this Act to the legislative council before September 1, 2010.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 64****SENATE BILL NO. 2444**

(Senators Stenehjem, O'Connell)

(Representatives Carlson, Boucher)

(Approved by the Delayed Bills Committee)

AN ACT to provide an appropriation for defraying the expenses of the adjutant general related to 2009 flood disaster response; to require certain funds to be deposited in the general fund; to authorize transfers; to provide for budget section reports; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$12,500,000, or so much of the sum as may be necessary, and from special funds derived from federal funds or other income the sum of \$20,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying the expenses relating to the 2009 flood disaster, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 2. REIMBURSEMENTS - DEPOSIT IN GENERAL FUND.** The adjutant general shall deposit any reimbursements received from federal or other sources for state expenses paid with funding from the general fund and incurred relating to the 2009 flood disaster in the general fund during the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 3. TRANSFER.** The adjutant general may transfer funds, as necessary, from amounts appropriated in section 1 of this Act to the national guard emergency fund to defray expenses relating to the 2009 flood disaster.

**SECTION 4. FUNDING TRANSFERS EXCEPTION - AUTHORIZATION.** Notwithstanding section 54-16-04, the adjutant general may transfer appropriation authority between line items within each subdivision and between subdivisions of the entities under the control of the adjutant general for the period beginning with the effective date of this Act and ending June 30, 2011. The adjutant general shall notify the office of management and budget of any transfer made pursuant to this section.

**SECTION 5. BUDGET SECTION REPORTS.** The adjutant general shall provide periodic reports to the budget section on 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009  
Filed April 9, 2009

# GENERAL PROVISIONS

## CHAPTER 65

### HOUSE BILL NO. 1042

(Legislative Council)  
(Judiciary Committee)

AN ACT to create and enact chapter 47-32 of the North Dakota Century Code, relating to technical corrections; to amend and reenact sections 1-02-12, 12.1-12-09, and 16.1-01-09, subdivision j of subsection 1 of section 54-07-01.2, subsection 2 of section 57-39.2-18, and section 57-40.2-09 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 15.1-13-32 and 32-42-04 and chapter 33-06 of the North Dakota Century Code, relating to obsolete provisions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 1-02-12 of the North Dakota Century Code is amended and reenacted as follows:

**1-02-12. Headnote, cross-reference note, and source note.** No headnote, source note, or cross-reference note, whether designating an entire title, chapter, section, subsection, or subdivision, constitutes any part of a statute. A headnote may not be used to determine legislative intent or the legislative history for any statute. An effective date or expiration date note preceding a headnote is not a part of the headnote and is a part of the statute.

**SECTION 2. AMENDMENT.** Section 12.1-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-12-09. Definitions for chapter.** In this chapter, "thing of value" and "thing of pecuniary value" do not include (1) salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or (2) concurrence in official action in the course of legitimate compromise among public servants, except as provided in section 9 of article IV or section 44 10 of article V of the Constitution of North Dakota.

<sup>16</sup> **SECTION 3. AMENDMENT.** Section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-09. Initiative or referendum petitions - Signature - Form - Circulation.**

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<sup>16</sup> Section 16.1-01-09 was also amended by section 3 of Senate Bill No. 2324, chapter 180.

- 1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature. The filed signature forms must be originals.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.
- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.
- 2. No person may sign any initiative or referendum petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A referendum or initiative petition must be on a form prescribed by the secretary of state containing the following information:

REFERENDUM [INITIATIVE] PETITION  
TO THE SECRETARY OF STATE,  
STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request [House (Senate) Bill \_\_\_\_\_ passed by the \_\_\_\_\_ Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name _____ (Chairman)	Address _____

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. ~~IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.~~

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

Month, Day, Year	Name of Qualified Elector	Residential Address or Complete Rural Route or General Delivery Address	City, State
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- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_
- 7. \_\_\_\_\_
- 8. \_\_\_\_\_

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- 3. Each copy of any petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota )  
 County of \_\_\_\_\_ ) ss.  
 (county where signed)

I, \_\_\_\_\_, being sworn, say that I am a qualified  
 (circulator)  
 elector; that I reside at \_\_\_\_\_;  
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

\_\_\_\_\_  
 (signature of circulator)

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_, at  
 \_\_\_\_\_, North Dakota.  
 (city)

(Notary Seal) \_\_\_\_\_  
 (signature of notary)  
 Notary Public  
 My commission expires \_\_\_\_\_

4. No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 3 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.
5. When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
6. An initiative or referendum petition may be submitted to the secretary of state until midnight of the day designated as the deadline for submitting the petition.
7. An initiative petition may be circulated for one year from the date it is approved for circulation by the secretary of state.

**SECTION 4.** Chapter 47-32 of the North Dakota Century Code is created and enacted as follows:

**47-32-01. When eviction maintainable.** An action of eviction to recover the possession of real estate is maintainable in the proper district court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after peaceably entering upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the possession was acquired peaceably or otherwise.
4. A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
7. A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the premises.
8. The lessee violates a material term of the written lease agreement between the lessor and lessee.

**47-32-02. Appearance - Notice of intention to evict - When required - When and how served.** In any action for eviction the time specified in the summons for the appearance of the defendant may not be fewer than three nor more than fifteen days from the date on which the summons is issued. If the person cannot be found in the county, of which the return of the sheriff or process server is prima facie proof, and service has been attempted at least once between the hours of six p.m. and ten p.m. upon the filing of an affidavit of the plaintiff or the plaintiff's attorney stating that the defendant cannot be found or on belief that the defendant is not in this state and a copy of the summons has been mailed to the defendant at the defendant's last-known address if any is known to the plaintiff, service of the summons may be made upon the defendant by the sheriff or process server posting the summons upon the door of the residential unit. In all cases arising under subsections 4, 5, 6, and 8 of section 47-32-01, three days' written notice of intention to evict must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted. The notice may be served and returned as a summons is served and returned or, if the party cannot be found, then by the sheriff of the county or a process server posting the notice conspicuously upon the premises. Service by delivery of a copy of the summons to the defendant in person within the county must be made at least three days before the time fixed for the appearance of the defendant. Service elsewhere or personal service in any other mode must be made at least seven days before the time fixed for the appearance of the defendant.

**47-32-03. Legal representatives may bring eviction actions.** Executors and administrators may bring actions of eviction in the district courts in the same manner as their testators and intestates, as the case may be.

**47-32-04. Eviction actions not joinable with other actions - Exception - When counterclaims only interposable.** An action of eviction cannot be brought in a district court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits. If the court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship on the defendant or the defendant's family, except in cases in which the eviction judgment is based in whole or in part on a disturbance of the peace, the court may stay the special execution for a reasonable period, not to exceed five days.

<sup>17</sup> **SECTION 5. AMENDMENT.** Subdivision j of subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- j. The education standards and practices board ~~and the administrator's professional practices board.~~

**SECTION 6. AMENDMENT.** Subsection 2 of section 57-39.2-18 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person who ~~shall sell~~ sells tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas, and communication service at retail in this state after that person's permit shall have been revoked, or without procuring a permit ~~within sixty days after the effective date of this chapter,~~ as provided in section 57-39.2-14, or who ~~shall violate the provisions of~~ violates section 57-39.2-09, and the officers of any corporation or the managers of any limited liability company who ~~shall so act~~ acts, ~~shall be~~ is guilty of a class A misdemeanor.

**SECTION 7. AMENDMENT.** Section 57-40.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-09. Records required.** Each retailer required or authorized to collect the tax imposed by this chapter, and each person using in this state tangible personal property purchased for resale or for use shall keep such records, receipts, invoices, and other pertinent papers as the commissioner shall require and each such retailer or person shall preserve for a period of three years and three months all invoices and other records of such tangible personal property purchased for resale or for use. The commissioner, or any duly authorized agent, may examine the books, papers, records, and equipment of any person who sells tangible personal property or who is liable for such tax, and may investigate the character of the business of any such person to verify the accuracy of any return made, or if no return was made, to ascertain and determine the amount due. Any such books, papers,

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<sup>17</sup> Section 54-07-01.2 was also amended by section 17 of House Bill No. 1025, chapter 80.

and records must be made available within this state for such examination upon reasonable notice if the commissioner shall make an order to that effect.

**SECTION 8. REPEAL.** Sections 15.1-13-32 and 32-42-04 and chapter 33-06 of the North Dakota Century Code are repealed.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 66****SENATE BILL NO. 2192**

(Senators Horne, Lyson, Marcellais)  
(Representatives Amerman, Keiser, Klemin)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to Vietnam Veterans' Day; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 1-03 of the North Dakota Century Code is created and enacted as follows:

**Vietnam Veterans' Day.** March twenty-ninth of each year is Vietnam Veterans' Day. Each year the governor shall issue a proclamation on March twenty-ninth in honor and remembrance of surviving and departed Vietnam veterans, including the one hundred ninety-eight individuals from North Dakota whose names are listed on the Vietnam Veterans Memorial wall in Washington, District of Columbia, and those veterans who are or were missing in action or prisoners of war.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

# AGRICULTURE

## CHAPTER 67

### HOUSE BILL NO. 1125

(Natural Resources Committee)

(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-01-17.1 of the North Dakota Century Code, relating to control of predatory animals, destructive birds, and injurious field rodents.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-17.1. State to cooperate with the animal and plant health inspection service and other agencies in destruction of predatory animals, destructive birds, and injurious field rodents.** The agriculture commissioner may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of ~~coyotes, wolves, bobcats, and foxes~~ fur-bearers that are injurious to livestock, poultry, and big and small game; injurious field rodents ~~in rural areas; big game threatening human health or domestic livestock;~~ and ~~certain nongame species of~~ birds causing crop damage or substantial economic loss or threatening human health. This control and destruction must be approved by the director of the game and fish department. The agriculture commissioner may enter into written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish department covering the methods and procedures for the control and destruction of these birds and animals, the extent of supervision by either or both the agriculture commissioner and the animal and plant health inspection service or other appropriate federal agency, and the use and expenditure of the funds appropriated therefor by the legislative assembly. The agriculture commissioner, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter into agreements with other governmental agencies and with counties, associations, corporations, limited liability companies, or individuals when cooperation is deemed to be necessary to promote the control and destruction of these birds and animals.

Approved April 16, 2009

Filed April 17, 2009

**CHAPTER 68****SENATE BILL NO. 2438**

(Senators Wanzek, Dotzenrod, Flakoll)  
(Representatives Belter, Brandenburg, S. Meyer)

AN ACT to create and enact two new sections to chapter 4-01 of the North Dakota Century Code, relating to the promotion of sustainably grown agricultural commodities; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

**Sustainably grown in North Dakota - Application - Logo - Promotion of commodities.**

1. The agriculture commissioner shall implement a program to promote agricultural commodities that are sustainably grown in North Dakota.
2. A producer may apply to the commissioner and upon demonstrating that the producer's growing practices with respect to a particular commodity meet the commissioner's established criteria for sustainability, the commissioner shall authorize the producer to label and market the commodity as being sustainably grown in North Dakota.
3. The commissioner shall develop and make available for the use of authorized producers a logo indicating that the commodity is sustainably grown in North Dakota. The commissioner shall actively support and promote the sale and use of products identified as sustainably grown in North Dakota.
4. The commissioner may establish and charge producers a fee for participating in the program. The commissioner shall forward all fees collected under this section to the state treasurer for deposit in the general fund.
5. For purposes of this section, "sustainably grown" means that a crop is grown using research-based practices that result in:
  - a. Increased efficiencies in soil and nutrient preservation;
  - b. Decreased reliance on tillage and other soil-depleting practices;
  - c. Increased efficiencies in the use of water;
  - d. Increased efficiencies in the use of other necessary and measurable agricultural inputs;
  - e. Increased yield efficiencies; and

- f. Greater economic benefit to producers.

**SECTION 2.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

**Advisory committee on sustainable agriculture - Creation - Duties - Powers - Compensation - Continuing appropriation.**

1. The agriculture commissioner shall appoint an advisory committee on sustainable agriculture.
  - a. The committee must include:
    - (1) The chairman of the house agriculture committee or the chairman's designee;
    - (2) The chairman of the senate agriculture committee or the chairman's designee;
    - (3) The commissioner of the department of commerce or the commissioner's designee;
    - (4) The director of the North Dakota state university agricultural experiment station;
    - (5) An agricultural producer who utilizes innovative research-based technologies in farming operations;
    - (6) A representative of an international agricultural corporation; and
    - (7) An individual specializing in the domestic and international marketing of agricultural products.
  - b. If both houses of the legislative assembly are controlled by the same party, the committee also must include one member of the legislative assembly from the minority party, appointed by the chairman of the legislative council.
2. The committee shall:
  - a. Examine the concept of sustainability with respect to conventional farming practices and modern technology-based production practices;
  - b. Examine production practices that are efficient and able to meet current and future global food and nutritional needs;
  - c. Examine production practices that promote increased efficiencies in resource use, improve human health through access to safe and nutritious food, and enhance economic opportunities for individual producers;
  - d. Explore metric evaluations to measure the attainment, maintenance, and certification of sustainability;

- e. Advise the commissioner regarding the development of a sustainability certification program and the marketing and packaging of products containing the certification;
  - f. Explore the standards held by international private sector certifying groups which have the potential to increase sales of North Dakota products; and
  - g. Report to the legislative council on the status of committee activities.
3. The committee may accept gifts, grants, and donations of money, property, and services. All moneys received as gifts, grants, or donations are appropriated on a continuing basis to the agriculture commissioner for the purpose of carrying out this section.
4. Each legislative member of the committee is entitled to receive per diem compensation in the amount established by subsection 1 of section 54-03-20 plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the committee.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2011.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 69

### SENATE BILL NO. 2373

(Senators Krebsbach, Grindberg, Robinson)  
(Representatives Glassheim, Klein, Wald)

AN ACT to provide for a grape and wine program committee; to provide a report to the legislative assembly; to provide an appropriation; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the grape and wine program committee for the purpose of providing matching funds for grape research, for the biennium beginning July 1, 2009, and ending June 30, 2011. The grape and wine program committee may spend funds appropriated under this section for grants only after consultation with the main research center and only to the extent of \$4 for each \$1 provided from other sources. The grape and wine program committee may spend additional funds from gifts, grants, or donations and those additional funds are appropriated to the grape and wine program committee.

#### **SECTION 2. Grape and wine program committee.**

1. The grape and wine program committee is a seven-member committee that shall advise the agriculture commissioner on the commissioner's efforts to provide producer education, marketing, and promotion of the grape and wine industry in this state. In addition, the committee shall advise the vice president for agriculture and university extension at North Dakota state university and the director of the North Dakota agricultural experiment station on priorities for research for the grape and wine industry in this state.
2. The committee consists of:
  - a. The agriculture commissioner or the commissioner's designee;
  - b. The vice president for agriculture at North Dakota state university or the vice president's designee;
  - c. An individual appointed by the governor representing the grape or wine industry in this state;
  - d. An individual appointed by the commissioner of the department of commerce;
  - e. An individual appointed by the state board of agricultural research and education; and
  - f. Two individuals appointed by the North Dakota grape growers association.

3. All members of the committee shall serve for a term of two years, beginning July first of each odd-numbered year, and may be reappointed for additional terms.
4. If any member of the committee resigns or ceases to be a member of the class the member represents, that individual's membership on the committee ceases and the appropriate appointing authority may appoint a new member for the remainder of the term.
5. The North Dakota grape growers association shall designate as chairman one of the two individuals the association appoints to the committee unless the committee elects a different chairman from the members on the committee. The committee shall meet at least once every two years and at the call of the chairman.
6. Members of the committee are entitled up to the per diem compensation provided to members of the legislative assembly under subsection 1 of section 54-03-20 and expense reimbursement.

**SECTION 3. REPORT TO SIXTY-SECOND AND SIXTY-THIRD LEGISLATIVE ASSEMBLIES.** The grape and wine program committee shall report to the sixty-second and sixty-third legislative assemblies on the progress of research, producer education, marketing, and promotion of the grape and wine industry in this state.

**SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2013, and after that date is ineffective.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 70****HOUSE BILL NO. 1109**

(Representatives Mueller, Hofstad)

(At the request of the Agriculture Commissioner)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to meetings of commodity groups; and to amend and reenact sections 4-10.1-04, 4-10.2-03, 4-10.3-03, 4-10.4-03, 4-10.5-02, 4-10.7-02, and 4-27-04 of the North Dakota Century Code, or in the alternative to amend and reenact sections 4.1-02-01, 4.1-02-03, 4.1-02-09, 4.1-06-03, 4.1-07-01, 4.1-07-03, 4.1-07-08, 4.1-09-01, 4.1-09-04, 4.1-09-12, 4.1-10-03, 4.1-10-05, 4.1-10-06, 4.1-11-01, 4.1-11-03, and 4.1-11-08 of the North Dakota Century Code, relating to removal of the agriculture commissioner from governing bodies of commodity groups.

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

**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

**Commodity groups - Agriculture commissioner - Meetings.**

1. The agriculture commissioner may participate, as a nonvoting member, in any regular or special meeting of a commodity group, including any executive session held by a commodity group.
2. Annually, the agriculture commissioner shall call a meeting of representatives from each commodity group for the purpose of engaging in collaborative efforts to promote and market agricultural commodities.
3. For purposes of this section, "commodity group" means the:
  - a. North Dakota barley council;
  - b. North Dakota beef commission;
  - c. North Dakota beekeepers association;
  - d. North Dakota corn utilization council;
  - e. North Dakota dairy promotion commission;
  - f. North Dakota dry bean council;
  - g. North Dakota dry pea and lentil council;
  - h. North Dakota oilseed council;
  - i. North Dakota potato council;
  - j. North Dakota soybean council;

- k. North Dakota turkey federation; and
- l. North Dakota wheat commission.

**SECTION 2. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.1-04. North Dakota potato council - Membership - Election - Term.**

1. There is ~~hereby~~ established a North Dakota potato council. The council is composed of ~~the agriculture commissioner or the commissioner's designated representative, who is chairman of the council, and one participating grower elected from each of the districts hereinafter established in this chapter. Annually, the members of the council shall elect one from among themselves to serve as the chairman.~~
2. Every elected council member must be a United States citizen of ~~the state~~ and a bona fide resident of and participating grower in the district that the member represents. The term of each elected member is three years and begins on July first of the year of election, except that initially one member must be elected for a three-year term, two members must be elected for two-year terms, and two members must be elected for one-year terms as designated by the commissioner. An elected member of the council may not serve more than two consecutive three-year terms.
3. If at any time during a member's term ~~that the~~ member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified participating grower for the remainder of the term of the office vacated.
4. The commissioner shall conduct all elections under this section in each district in ~~such a manner as the commissioner deems~~ determines fair and reasonable. All ~~such~~ elections must be conducted in the month of June. ~~No elected member of the council is eligible to serve more than two consecutive three-year terms.~~

**SECTION 3. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.2-03. North Dakota oilseed council - Membership - Election - Term.**

1. The North Dakota oilseed council is composed of:
  - a. One participating sunflower grower elected from each of the districts established in section 4-10.2-04;
  - b. One participating canola grower elected from each of the districts established in section 4-10.2-04.1;
  - c. One participating safflower grower appointed by the governor;
  - d. One participating crambe grower appointed by the governor;

- e. One participating flax grower appointed by the governor; and
  - f. One member appointed by the director of the agricultural experiment station.
2. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council.~~
3. a. Every elected and appointed council member must be a United States citizen ~~of the state~~.
- b. The elected member who is a sunflower grower must be a bona fide resident of and participating sunflower grower in the district the member represents.
- c. The elected member who is a canola grower must be a bona fide resident of and participating canola grower in the district the member represents.
4. a. The term of each elected member who is a sunflower grower is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner.
- b. The term of each elected member who is a canola grower is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; one member must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner.
- c. The term of the elected member who is a sunflower grower from district seven must coincide with the term of the elected member who is a sunflower grower from district six.
- d. The term of each appointed member is three years and begins on April first of the year of the appointment. Initially, the term of the member who is a flax grower must be for three years, the term of the member appointed by the director of the agricultural experiment station must be for two years, and the term of the member who is a safflower grower must be for two years.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the vacated term.
6. The commissioner, or a county agent designated by the commissioner, in cooperation with the North Dakota state university extension service, shall conduct elections under this section in each district in the manner the commissioner determines fair and reasonable. All elections must be conducted before April first of each year.

7. No elected or appointed member of the council is eligible to serve more than four consecutive three-year terms.

**SECTION 4. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.3-03. North Dakota dry bean council - Membership - Election - Term.**

1. The North Dakota dry bean council is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The agriculture commissioner is an ex officio member of the council.~~
2. Every elected council member must be a United States citizen of ~~the~~ state and a bona fide resident of and participating grower in the district the member represents.
3. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council ~~shall~~, by majority vote, shall appoint another qualified participating grower for the remainder of the term of the office vacated.
5. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. Elections must be held before April first of each year.
6. No elected member of the council is eligible to serve more than three consecutive three-year terms.

**SECTION 5. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-03. Council - Membership - Election - Term.** The council is composed of one participating grower elected from each of the districts established in section 4-10.4-04. The chairman of the council must be an elected member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council and does not have a vote.~~ Every elected council member must be a United States citizen of ~~the~~ state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner. Notwithstanding the terms provided for members

elected before August 1, 1997, the board, before December 31, 1997, shall determine by lot the order of subsequent elections for its members so that two members are elected for a four-year term during 1998, and one member is elected for a four-year term during each of the subsequent three years. The term of each member elected after July 31, 1997, is four years and begins on April first of the year of election. If at any time during a member's term a member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. All such elections must be completed ~~prior to~~ before expiration of the members' terms. No member serving on the council before August 1, 1997, is eligible to serve more than two consecutive four-year terms. No member elected to the council after July 31, 1997, is eligible to serve more than three consecutive four-year terms.

**SECTION 6. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-02. North Dakota soybean council - Membership - Election - Term.** The North Dakota soybean council ~~must be~~ is composed of one participating grower elected from each of the districts established in section 4-10.5-03. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council.~~ Every elected council member must be a resident of and participating grower in the district the member represents. The term of each elected member is three years, beginning on April first of the year of election, except that initially two members must be elected for three-year terms; three members must be elected for two-year terms; and three members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council ~~shall~~, by majority vote, shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. All elections must be conducted no later than April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

**SECTION 7. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.7-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.7-02. Dry pea and lentil council - Membership - Term.** There is a North Dakota dry pea and lentil council. The council is composed of one participating grower elected from each of the districts established in section 4-10.7-04. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The agriculture commissioner is an ex officio member of the council.~~ Every elected member of the council must be a United States citizen ~~of the state~~ and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two

members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified grower from the affected district for the remainder of the term of the office vacated. No elected member of the council is eligible to serve more than three consecutive three-year terms.

**SECTION 8. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-27-04. North Dakota dairy promotion commission.** There is hereby created a North Dakota dairy promotion commission ~~consisting of nine members.~~ The governor shall appoint two members who must be producers and one member who must be a processor. The governor shall appoint the producer members from a list of nominees supplied by the American dairy association of North Dakota and the processor member from a list of nominees supplied by the North Dakota dairy industries association. Each list of nominees must contain at least twice as many names as the number of appointments to be made therefrom. The term of office of each appointive member of the commission is two years, except that the initial appointment of one producer is for only one year, so that thereafter the term of one producer will expire each year. Terms of office commence on the first day of July. ~~In addition to the three appointive members there must be two ex officio, nonvoting members of the commission who must be the agriculture commissioner or the commissioner's designee and the head of the department of animal science department or the department's designee sciences at North Dakota state university, or the chairman's designee, is an ex officio nonvoting member.~~ In addition to the appointive and ex officio members there must be four elected members of the commission who must be the president of the American dairy association of North Dakota, the president of the dairy council of North Dakota, and two members of the milk producers association of North Dakota to be elected by that association. The elected members shall meet with the commission and shall have the same rights and duties as the appointive members, including the right to vote. The milk producers shall serve terms of two years, commencing on July first, except that initially one producer shall serve a term of one year as designated by the milk producers association of North Dakota.

<sup>18</sup> **SECTION 9. AMENDMENT.** Section 4.1-02-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-02-01. Definitions.** As used in this chapter:

1. "Barley" means all varieties of barley harvested in the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Council" means the North Dakota barley council.

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<sup>18</sup> Section 4.1-02-01 was created by section 2 of House Bill No. 1025, chapter 80.

- 4- 3. "First purchaser" means any person accepting for shipment or otherwise acquiring barley from a producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, if the actual or constructive possession of the barley is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
- 5- 4. "Participating producer" means a producer that has not applied for a refund under section 4.1-02-16 during the preceding twelve months.
- 6- 5. "Producer" means any person that:
- a. Plants or causes to be planted a barley crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

<sup>19</sup> **SECTION 10. AMENDMENT.** Section 4.1-02-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-02-03. Council - Membership - Election - Term.**

1. The council consists of one individual elected from each district established in section 4.1-02-02 ~~and the commissioner, who is a nonvoting member.~~
2. Each member of the council; ~~other than the commissioner,~~ must be a resident of and a participating producer in the district that the member represents.
3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
5. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

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<sup>19</sup> Section 4.1-02-03 was created by section 2 of House Bill No. 1025, chapter 80.

<sup>20</sup> **SECTION 11. AMENDMENT.** Section 4.1-02-09 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-02-09. Council members - Compensation.** Each member of the council, ~~except the commissioner,~~ is entitled to receive compensation in the amount established by the council, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>21</sup> **SECTION 12. AMENDMENT.** Section 4.1-06-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-06-03. North Dakota dry bean council - Membership - Term.**

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02 ~~and the commissioner, who is a nonvoting member.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council, ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

<sup>22</sup> **SECTION 13. AMENDMENT.** Section 4.1-07-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-07-01. Definitions.** As used in this chapter:

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<sup>20</sup> Section 4.1-02-09 was created by section 2 of House Bill No. 1025, chapter 80; was also amended by section 18 of Senate Bill No. 2242, chapter 72.

<sup>21</sup> Section 4.1-06-03 was created by section 6 of House Bill No. 1025, chapter 80.

<sup>22</sup> Section 4.1-07-01 was created by section 7 of House Bill No. 1025, chapter 80.

1. ~~"Commissioner"~~ means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. ~~2.~~ "Dry peas and lentils" include chickpeas, lupins, and fava beans.
4. ~~3.~~ "First purchaser" means any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. The term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
5. ~~4.~~ "Participating producer" means a producer that has not applied for a refund under section 4.1-07-15 for at least three years.
6. ~~5.~~ "Producer" means any person that:
  - a. Plants or causes to be planted a dry pea and lentil crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

<sup>23</sup> **SECTION 14. AMENDMENT.** Section 4.1-07-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-07-03. Dry pea and lentil council - Membership - Term.**

1. The council consists of one participating producer elected from each district established in section 4.1-07-02 ~~and the commissioner.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council, ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office

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<sup>23</sup> Section 4.1-07-03 was created by section 7 of House Bill No. 1025, chapter 80.

is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.

6. An elected member of the council may not serve more than three consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

<sup>24</sup> **SECTION 15. AMENDMENT.** Section 4.1-07-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-07-08. Council members - Compensation.** ~~Except for the agriculture commissioner, each~~ Each member of the council is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>25</sup> **SECTION 16. AMENDMENT.** Section 4.1-09-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-09-01. Definitions.** As used in this chapter:

1. ~~"Commissioner" means the agriculture commissioner or the commissioner's designee.~~
2. "Council" means the North Dakota oilseed council.
- 3- 2. "First purchaser" means any person that buys, accepts for shipment, or otherwise acquires oilseeds from a producer. The term includes a mortgagee, pledgee, lienor, and any other person having a claim against a producer if the actual or constructive possession of the oilseed is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
- 4- 3. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
- 5- 4. "Participating producer" means a producer that has not applied for a refund under section 4.1-09-19 during the preceding twelve months.
- 6- 5. "Producer" means any person that:
  - a. Plants or causes to be planted an oilseed crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;

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<sup>24</sup> Section 4.1-07-08 was created by section 7 of House Bill No. 1025, chapter 80, and was also amended by section 23 of Senate Bill No. 2242, chapter 72.

<sup>25</sup> Section 4.1-09-01 was created by section 9 of House Bill No. 1025, chapter 80.

- b. Will have met the requirements of subdivision a during the next available growing season; or
- c. Has met the requirements of subdivision a during the immediately preceding growing season.

<sup>26</sup> **SECTION 17. AMENDMENT.** Section 4.1-09-04 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-09-04. North Dakota oilseed council - Membership - Term.**

1. The council consists of:
  - a. One participating sunflower producer elected from each of the seven districts established in section 4.1-09-02;
  - b. One participating canola producer elected from each of the three districts established in section 4.1-09-03;
  - c. One participating safflower producer appointed by the governor;
  - d. One participating flax producer appointed by the governor;
  - e. (1) One participating producer of an oilseed other than sunflowers, canola, safflowers, or flax, appointed by the governor; or
    - (2) One participating producer of any oilseed, appointed by the governor, if the governor is unable to appoint a participating producer who meets the requirements of paragraph 1; and
  - f. One individual appointed by the director of the agricultural experiment station; ~~and~~
  - ~~g. The agriculture commissioner, who is a nonvoting member.~~
2. Each member of the council who represents a district must be a resident of and participating producer in that district.
3. a. The term of each member who represents a sunflower district is three years and begins on April first following the member's election. The terms of members who represent sunflower districts must be staggered so that:
  - (1) No more than three expire in any one year; and
  - (2) The term of the member who represents Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is identical to that of the member who represents Adams, Billings, Bowman, Dunn, Golden Valley,

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<sup>26</sup> Section 4.1-09-04 was created by section 9 of House Bill No. 1025, chapter 80.

Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.

- b. The term of each member who represents a canola district is three years and begins on April first following the member's election. The terms of members who represent canola districts must be staggered so that no more than one term expires in any one year.
  - c. The term of each member who is appointed is three years and begins on April first following the member's appointment. The terms of members who are appointed must be staggered so that no more than two expire in any one year.
4. If at any time a member of the council ceases to possess any of the qualifications required by this section, the member's office is deemed vacant.
    - a. If the office was held by an elected member, the remaining members of the council shall appoint another qualified producer for the remainder of the term.
    - b. If the office was held by a gubernatorial appointee, the governor shall appoint another qualified producer.
    - c. If the office was held by an appointee of the director of the agricultural experiment station, the director shall appoint another qualified individual.
  5. A member of the council may not serve more than four consecutive terms.
  6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

<sup>27</sup> **SECTION 18. AMENDMENT.** Section 4.1-09-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-09-12. Council members - Compensation.** Each member of the council, except the ~~agriculture commissioner~~ and the individual appointed by the director of the agricultural experiment station, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>28</sup> **SECTION 19. AMENDMENT.** Section 4.1-10-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

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<sup>27</sup> Section 4.1-09-12 was created by section 9 of House Bill No. 1025, chapter 80, and was also amended by section 24 of Senate Bill No. 2242, chapter 72.

<sup>28</sup> Section 4.1-10-03 was created by section 10 of House Bill No. 1025, chapter 80.

#### 4.1-10-03. North Dakota potato council - Membership - Term.

1. The North Dakota potato council is composed of:
  - a. ~~One one~~ participating producer elected from each of the five districts established in section 4.1-10-02; ~~and~~
  - b. ~~The agriculture commissioner, who serves as the chairman.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council; ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on July first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term that member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

<sup>29</sup> **SECTION 20. AMENDMENT.** Section 4.1-10-05 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-10-05. Chairman - Meetings.** Annually, the council shall elect one member to serve as the chairman. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

<sup>30</sup> **SECTION 21. AMENDMENT.** Section 4.1-10-06 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-10-06. Council members - Compensation.** Each member of the council, ~~except the agriculture commissioner,~~ is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

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<sup>29</sup> Section 4.1-10-05 was created by section 10 of House Bill No. 1025, chapter 80.

<sup>30</sup> Section 4.1-10-06 was created by section 10 of House Bill No. 1025, chapter 80, and was also amended by section 25 of Senate Bill No. 2242, chapter 72.

<sup>31</sup> **SECTION 22. AMENDMENT.** Section 4.1-11-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-11-01. Definitions.** As used in this chapter:

1. ~~"Commissioner" means the agriculture commissioner or the commissioner's designee.~~
2. "Council" means the North Dakota soybean council.
3. ~~2.~~ "Designated handler" means any person that initially places soybeans into the channels of trade and commerce or any person that processes soybeans into food for human consumption.
4. ~~3.~~ a. "Producer" means any person that:
  - (1) Plants or causes to be planted a soybean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - (2) Will have met the requirements of paragraph 1 during the next available growing season; or
  - (3) Has met the requirements of paragraph 1 during the immediately preceding growing season.
- b. The term does not include an organic producer that has been exempted from the payment of assessments, in accordance with federal law.

<sup>32</sup> **SECTION 23. AMENDMENT.** Section 4.1-11-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-11-03. North Dakota soybean council - Membership - Terms.**

1. The council consists of one producer elected from each of the eight districts established in section 4.1-11-02 ~~and the commissioner.~~
2. Each member of the council; ~~except the commissioner,~~ must be a resident of and a producer in the district that the member represents.
3. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than three expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office

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<sup>31</sup> Section 4.1-11-01 was created by section 11 of House Bill No. 1025, chapter 80.

<sup>32</sup> Section 4.1-11-03 was created by section 11 of House Bill No. 1025, chapter 80.

is deemed vacant and the council, by majority vote, shall appoint another qualified producer to serve for the remainder of the term.

5. An elected member of the council may not serve more than two consecutive terms.
6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

<sup>33</sup> **SECTION 24. AMENDMENT.** Section 4.1-11-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-11-08. Council members - Compensation.** Each member of the council, ~~except the agriculture commissioner,~~ is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>33</sup> Section 4.1-11-08 was created by section 11 of House Bill No. 1025, chapter 80, and was also amended by section 26 of Senate Bill No. 2242, chapter 72.

**CHAPTER 71****HOUSE BILL NO. 1459**

(Representatives Brandenburg, Froelich, Kerzman, Kretschmar)  
(Senators Erbele, Krauter)

AN ACT to provide legislative findings and a declaration concerning lands around Lake Oahe managed by the army corps of engineers; to provide for the control or eradication of noxious weeds on publicly owned lands; and to provide for a legislative council study.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE FINDINGS AND DECLARATION OF INTENT.**

The legislative assembly finds and declares that:

1. The economy and well-being of the residents of North Dakota are dependent upon agriculture.
2. The United States, through the army corps of engineers, has acquired certain lands around Lake Oahe.
3. The army corps of engineers has failed to control weeds and manage this land properly.
4. The failure to control weeds on land managed by the army corps of engineers is a public nuisance and jeopardizes the public health, safety, and general welfare of the citizens of North Dakota.

**SECTION 2. CONGRESS URGED TO TRANSFER CERTAIN LANDS - DUTIES OF SECRETARY OF STATE.** The legislative assembly urges the Congress of the United States to enact legislation to transfer lands around Lake Oahe, excluding lands adjoining the Standing Rock Reservation, owned by the United States, through the army corps of engineers, to the state of North Dakota. The secretary of state shall forward copies of this Act to each member of the North Dakota congressional delegation.

**SECTION 3. Publicly owned land - Noxious weed control or eradication.**

1. The commissioner shall attempt to arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Each weed control officer shall attempt to arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within the weed control officer's jurisdiction.
3. If a federal agency does not control or eradicate noxious weeds on land under the jurisdiction of the agency and does not develop a management plan for controlling or eradicating the noxious weeds, the appropriate weed control office shall notify the agency of the failure to control or eradicate the noxious weeds. The federal agency shall provide a report to the weed control authorities detailing the methods

used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.

4. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - WEED CONTROL PROGRAMS.** During the 2009-10 interim, the legislative council shall consider studying the weed control programs of the army corps of engineers on federal land under its control, including whether the army corps of engineers is in compliance with federal and any applicable state weed control laws, whether the army corps of engineers sufficiently budgets funds to address weed control on army corps of engineers' land, and whether Congress provides proper funding for weed control on army corps of engineers' land. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 72****SENATE BILL NO. 2242**

(Senators Taylor, Miller, Wanzek)  
(Representatives DeKrey, Headland, Metcalf)

AN ACT to amend and reenact sections 4-02.1-05, 4-05.1-17, 4-09-03, 4-09-20.2, 4-10.1-06, 4-10.2-05, 4-10.3-05, 4-10.4-05, 4-10.5-04, 4-10.6-04, 4-10.7-05, 4-14.1-05, 4-18.1-04, 4-22-04, 4-27-05, 4-28-05, 4-34-07, 6-09.10-03, 36-01-04, and 36-14-25 of the North Dakota Century Code or in the alternative to amend and reenact sections 4.1-02-09, 4.1-03-08, 4.1-04-07, 4.1-05-05, 4.1-06-08, 4.1-07-08, 4.1-09-12, 4.1-10-06, 4.1-11-08, and 4.1-13-12 of the North Dakota Century Code, relating to per diem compensation for members of agriculture-related boards.

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

**SECTION 1. AMENDMENT.** Section 4-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-02.1-05. Compensation of members.** Each member of the board of directors is entitled to receive compensation in the amount of ~~seventy five one hundred thirty-five~~ seventy five one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers while attending meetings or performing duties directed by the board. The board of directors may pay to members rendering unusual or special services to the association special compensation appropriate to the value of the services.

<sup>34</sup> **SECTION 2. AMENDMENT.** Section 4-05.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-17. Compensation of board members - Expenses.** Each appointed member of the state board of agricultural research and education is entitled to receive ~~seventy five one hundred thirty-five~~ seventy five one hundred thirty-five dollars per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

<sup>35</sup> **SECTION 3. AMENDMENT.** Section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.**

1. The commission is the governing board of the department.

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<sup>34</sup> Section 4.1-05-05 was created by section 5 of House Bill No. 1025, chapter 80.

<sup>35</sup> Section 4-09-03 was also amended by section 3 of Senate Bill No. 2125, chapter 73.

2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.
3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. Each member of the commission is entitled to receive compensation at the rate of ~~seventy-five~~ one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from the absent commission member.
4. The commission shall appoint a qualified manager of the department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of the commissioner, the commission may appoint a temporary commissioner to serve until the appointment of a permanent commissioner. The commissioner has responsibility for preparing the biennial budget and annual salary schedules that must be approved by the commission before submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and any other reports as requested by the commission.

**SECTION 4. AMENDMENT.** Section 4-09-20.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.**

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation ~~sixty-two~~ one hundred thirty-five dollars and ~~forty~~ fifty

ents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

**SECTION 5. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.1-06. Meetings - Quorum - Compensation and expenses of council.**

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council, except the chairman. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the commissioner.

**SECTION 6. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.2-05. Meetings - Quorum - Compensation and expenses of council.**

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

**SECTION 7. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.3-05. Meetings - Quorum - Compensation and expenses of council.**

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

**SECTION 8. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-05. Meetings - Quorum - Compensation and expenses of council.**

A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each voting member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council. The compensation provided in this section may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

**SECTION 9. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-04. Meetings - Quorum - Compensation and expenses of council.**

All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council, except the commissioner. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official.

**SECTION 10. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.6-04. Meetings - Compensation and expenses of council.**

The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. The council shall determine the amount of compensation payable to each council member. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

**SECTION 11. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-10.7-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.7-05. Meetings - Quorum - Compensation of council members.** A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

**SECTION 12. AMENDMENT.** Section 4-14.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-05. Agricultural products utilization commission - Reimbursement - Compensation.** All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive as per diem compensation ~~sixty-two~~ one hundred thirty-five dollars ~~and fifty cents~~ for each day devoted to attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

**SECTION 13. AMENDMENT.** Section 4-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-18.1-04. Milk marketing board.**

1. There is created a milk marketing board to consist of five members appointed by the governor. The board consists of one individual who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota milk producers association; one individual who is a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota dairy industries association; one individual who is a retailer, who must be selected by the governor from two names submitted to the governor by the North Dakota association of food retailers; and two individuals must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. An appointee may not have held elective or appointive public office during the period of two years immediately preceding appointment and may not hold any other public office, either elective or appointive, during the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.

2. The members of the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972; and each succeeding member holds office for a term of five years and until a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor.
3. Three members of the board constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman does not interfere with the member's right to vote on all matters before the board.
4. The board shall determine the amount of compensation payable to each member of the board. The amount payable may not exceed ~~seventy five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers; while attending meetings or performing duties directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.
5. Each member of the board shall give bond conditioned for the faithful performance of the member's duties. The board shall employ a director who serves under the direction and at the pleasure of the board and whose qualifications, duties, and compensation must be determined by the board. The director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter.
6. The board shall employ, in addition to the director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.
7. All expenditures under this chapter must be paid from the receipts under this chapter. Meetings of the board must be held at least every sixty days at the call of the chairman or a majority of the board.

**SECTION 14. AMENDMENT.** Section 4-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-22-04. Committee - Chairman - Quorum - Compensation.** The committee shall meet annually and select its chairman. The chairman shall serve for a term of one year from the date of selection. An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of

any four members. The members of the committee are entitled to receive ~~forty five~~ one hundred thirty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

**SECTION 15. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-27-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-27-05. Powers and duties of commission.**

1. The commission shall administer and enforce the provisions of this chapter and has and may exercise any and all of the powers conferred upon it herein. A majority of the members of the commission constitutes a quorum for the transaction of business and the carrying out of the duties of the commission.
2. The commission shall elect a chairman, vice chairman, secretary-treasurer, and such other officers as may be deemed advisable and adopt such rules, regulations, recommendations, and orders for the exercise of its powers and performance of its duties as is deemed advisable.
3. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the commission.
4. The commission shall select a state manager, whose compensation must be fixed by the commission. The commission is also authorized to employ such additional personnel as are necessary, including an attorney, to fix their compensation and terms of employment, and to incur such expenses as the commission may deem necessary and proper to carry out its duties, to be paid from moneys collected as herein provided.
5. The commission shall plan and carry out dairy products research, education, public relations, advertising, sales promotion, and other programs for the purpose of promoting the sale and consumption of dairy products on both a state and national basis and may contract for any service in connection therewith.
6. The commission may accept and disburse voluntary contributions for the use and purposes of the commission.
7. To effectuate the declared purposes of this chapter, the commission shall collect the assessment on all milk produced in this state and to make disbursements from such funds as provided herein.

**SECTION 16. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-28-05. Wheat commission - Meeting - Expenses - Legal adviser.** Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter, the commission shall meet at least once every calendar quarter at such times and places as determined by the commission and may meet in special meetings upon such call and notice as prescribed by rules adopted by the commission. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing other official duties directed by the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

**SECTION 17. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-34-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-34-07. Compensation - Expenses.** The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing other official duties as directed by the commission. The members of the commission shall receive no other salary or compensation for their service on the commission.

<sup>36</sup> **SECTION 18. AMENDMENT.** Section 4.1-02-09 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-02-09. Council members - Compensation.** Each member of the council, except the commissioner, is entitled to receive compensation in the amount established by the council, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>37</sup> **SECTION 19. AMENDMENT.** Section 4.1-03-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-03-08. Commission members - Compensation.** Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties as directed by the commission.

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<sup>36</sup> Section 4.1-02-09 was created by section 2 of House Bill No. 1025, chapter 80; was also amended by section 11 of House Bill No. 1109, chapter 70.

<sup>37</sup> Section 4.1-03-08 was created by section 3 of House Bill No. 1025, chapter 80.

<sup>38</sup> **SECTION 20. AMENDMENT.** Section 4.1-04-07 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-04-07. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officials if the member is attending meetings or performing duties directed by the council.

**SECTION 21. AMENDMENT.** Section 4.1-05-05 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-05-05. Commission members - Compensation.** Each member of the commission is entitled to receive compensation, in the amount established by the commission, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The compensation provided for in this section may not be paid to any member of the commission who receives a salary or other compensation as an employee or official of this state if the individual is serving on the commission by virtue of the individual's state office or state employment.

<sup>39</sup> **SECTION 22. AMENDMENT.** Section 4.1-06-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-06-08. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>40</sup> **SECTION 23. AMENDMENT.** Section 4.1-07-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-07-08. Council members - Compensation.** Except for the agriculture commissioner, each member of the council is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

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<sup>38</sup> Section 4.1-04-07 was created by section 4 of House Bill No. 1025, chapter 80.

<sup>39</sup> Section 4.1-06-08 was created by section 6 of House Bill No. 1025, chapter 80.

<sup>40</sup> Section 4.1-07-08 was created by section 7 of House Bill No. 1025, chapter 80, and was also amended by section 15 of House Bill No. 1109, chapter 70.

<sup>41</sup> **SECTION 24. AMENDMENT.** Section 4.1-09-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-09-12. Council members - Compensation.** Each member of the council, except the agriculture commissioner and the individual appointed by the director of the agricultural experiment station, is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>42</sup> **SECTION 25. AMENDMENT.** Section 4.1-10-06 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-10-06. Council members - Compensation.** Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>43</sup> **SECTION 26. AMENDMENT.** Section 4.1-11-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-11-08. Council members - Compensation.** Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

<sup>44</sup> **SECTION 27. AMENDMENT.** Section 4.1-13-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-13-12. Commission members - Compensation.** Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission.

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<sup>41</sup> Section 4.1-09-12 was created by section 9 of House Bill No. 1025, chapter 80, and was also amended by section 18 of House Bill No. 1109, chapter 70.

<sup>42</sup> Section 4.1-10-06 was created by section 10 of House Bill No. 1025, chapter 80, and was also amended by section 21 of House Bill No. 1109, chapter 70.

<sup>43</sup> Section 4.1-11-08 was created by section 11 of House Bill No. 1025, chapter 80, and was also amended by section 26 of House Bill No. 1109, chapter 70.

<sup>44</sup> Section 4.1-13-12 was created by section 13 of House Bill No. 1025, chapter 80.

**SECTION 28. AMENDMENT.** Section 6-09.10-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees.** The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to mediation participants are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive ~~seventy-five~~ one hundred thirty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

**SECTION 29. AMENDMENT.** Section 36-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**36-01-04. Compensation and expenses of members of board.** Each member of the board shall receive as compensation for services the sum of ~~fifty~~ one hundred thirty-five dollars per day for each day employed and actual expenses incurred in attending the meetings of the board. The sum must be paid out of the state treasury upon vouchers duly certified by the commissioner.

**SECTION 30. AMENDMENT.** Section 36-14-25 of the North Dakota Century Code is amended and reenacted as follows:

**36-14-25. Fees of appraisers - How paid.** Each member of the board of appraisers who is not an agent of the board is entitled to receive ~~fifty~~ one hundred thirty-five dollars per day as compensation for services rendered, plus reimbursement for expenses as provided by law for state officers. Fifty percent of the amount due under this section is payable by the state board of animal health and the other fifty percent is payable by the owner of the animal.

Approved April 28, 2009  
Filed May 1, 2009

## CHAPTER 73

### SENATE BILL NO. 2125

(Agriculture Committee)

(At the request of the State Seed Department)

AN ACT to amend and reenact subsection 21 of section 4-09-01, subsection 1 of section 4-09-02, subsection 2 of section 4-09-03, and sections 4-09-13, 4-09-17.1, 4-09-25, and 4-11-21 of the North Dakota Century Code, relating to the seed department's revolving fund and to the functions and responsibilities of the seed commission and the seed department.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 21 of section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Noxious weed seed" is divided into three classes defined as:
  - a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (~~*centaurea rhaponticum*~~ *repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (~~*centaurea maculosa lam-stoebe*~~ *L. subsp. micranthos*), hoary cress (~~*cardaria draba*~~ (~~+~~) ~~*desv. lepidium chalepense*~~), and yellow starthistle (*centaurea solstitialis* L.).
  - b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (~~*convolvulus calystegia*~~ *sepium* L.), wild oats (*avena fatua* L.), and quackgrass (~~*agropyron elymus*~~ *repens* (~~+~~) ~~*beauv. subsp. repens*~~).
  - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.

**SECTION 2. AMENDMENT.** Subsection 1 of section 4-09-02 of the North Dakota Century Code is amended and reenacted as follows:

1. There must be maintained a seed department of the state of North Dakota, which is designated as the official seed certification agency of the state. The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North

Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.

<sup>45</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The ~~associate dean~~ and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

**SECTION 4. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-13. Tolerances.** The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of June 30, ~~2005~~ 2009, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

**SECTION 5. AMENDMENT.** Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-17.1. Plant Variety Protection Act.** Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, ~~2007~~ 2009], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety

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<sup>45</sup> Section 4-09-03 was also amended by section 3 of Senate Bill No. 2242, chapter 72.

name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

**SECTION 6. AMENDMENT.** Section 4-09-25 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-25. Plant and seed records - Exempt.** The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determination determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

**SECTION 7. AMENDMENT.** Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-21. Fees and collections - Revolving fund - ~~Continuing appropriation~~ Appropriation.** The commissioner shall deposit all moneys arising from the collection of fees and other charges under this chapter with the state treasurer for credit to the seed department revolving fund. Moneys in this fund must be disbursed upon order of the commissioner, with the approval of the office of management and budget, and funds so approved by the office of management and budget ~~are appropriated on a continuing basis~~ must be disbursed within limits of legislative appropriations.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 74****SENATE BILL NO. 2368**

(Senators Olafson, Lindaas)

(Representatives Conklin, DeKrey, Kingsbury, Onstad)

AN ACT to amend and reenact subdivision a of subsection 17 of section 4-22-26 of the North Dakota Century Code, relating to the mill levy limit for soil conservation districts; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 17 of section 4-22-26 of the North Dakota Century Code is amended and reenacted as follows:

- a. The supervisors may make a tax levy, not exceeding ~~one mill~~ two mills, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 10, 2009  
Filed April 13, 2009

## CHAPTER 75

### HOUSE BILL NO. 1111

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to create and enact two new subsections to section 4-30-01 of the North Dakota Century Code, relating to dairy product definitions; and to amend and reenact sections 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-39, and 4-30-45.1 of the North Dakota Century Code, relating to dairy products regulations.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Two new subsections to section 4-30-01 of the North Dakota Century Code are created and enacted as follows:

"Pasteurized Milk Ordinance" means the 2007 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

"Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.

**SECTION 2. AMENDMENT.** Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-18. Sampling and testing procedures - Equipment - Supplies.** The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to ~~that~~ those described in the ~~eighteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" ~~published by the American public health association,~~ published by the American public health association, ~~incorporated,~~ a copy of which ~~shall~~ must be kept on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

**SECTION 3. AMENDMENT.** Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-20. Sampling of milk.** Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~eighteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" ~~published by the American public health association,~~ published by the American public health association, ~~incorporated.~~ Records must be kept which readily identify the

sample with those items used to determine payment for the milk. Such items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

**SECTION 4. AMENDMENT.** Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36. Standards for grade A milk and milk products - Adoption of amendments.** Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "~~Grade A Pasteurized Milk Ordinance; 2005 Revision; Public Health Service, Food and Drug Administration~~" which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO" ~~and all supplements added thereto.~~ The commissioner may adopt as ~~department~~ regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

**SECTION 5. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.** The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2005~~ 2007 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines ~~recommended in the eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.~~

**SECTION 6. AMENDMENT.** Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.** The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association~~ and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - 2005 Edition".

**SECTION 7. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.4. Grade A pasteurized milk ordinance.** Dairy producers, processors, and manufacturers shall comply with the "~~Grade A Pasteurized Milk Ordinance; 2005 Revision; Public Health Service, Food and Drug Administration~~" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2005~~ 2007 Revision".

**SECTION 8. AMENDMENT.** Section 4-30-39 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-39. Transportation, labeling, and distribution of processed and manufactured products - ~~Commissioner to adopt rules~~ Rulemaking - Violations.** The commissioner may adopt rules governing the labeling, distribution, and transportation of processed and manufactured milk or milk products. ~~No facility or vehicle may be used or operated in violation of these rules.~~

**SECTION 9. AMENDMENT.** Section 4-30-45.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-45.1. Labeling and identity standards.** ~~North Dakota labeling All persons who sell at retail in this state milk or milk products must comply with the labeling standards and standards of identity are those set forth in the National Labeling and Education Act of 1990, all supplements, and rules and regulations promulgated thereunder 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner. The commissioner shall adopt definitions consistent with federal law for, among other words, "milk", "butter", "cream", "cheese", and "ice cream". If state law conflicts with the National Labeling and Education Act of 1990, the National Labeling and Education Act of 1990 applies.~~

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 76****HOUSE BILL NO. 1149**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-33-02 of the North Dakota Century Code, relating to the state agricultural entomologist.

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

**SECTION 1. AMENDMENT.** Section 4-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-33-02. Administration - Rulemaking authority - State agricultural entomologist.** ~~The commissioner has the responsibility for administration of the provisions of shall administer this chapter. The commissioner shall employ a qualified entomologist to serve as state agricultural entomologist and to carry out the survey, control, and quarantine provisions of this chapter. The individual must be a graduate in agricultural entomology from an accredited college or university and must be stationed in Bismarck an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt such rules under chapter 28-32 as are necessary to carry out the purposes and provisions of this chapter.~~

Approved March 19, 2009  
Filed March 24, 2009

## CHAPTER 77

### SENATE BILL NO. 2248

(Senators Klein, Miller, Taylor)  
(Representatives Brandenburg, D. Johnson, Mueller)

AN ACT to amend and reenact sections 4-35-05, 4-35-08, 4-35-09, 4-35-09.1, 4-35-12, 4-35-14, 4-35-15, 4-35-16, 4-35-18, 4-35-19, 4-35-20, 4-35-22, 4-35-23, and 4-35-24 of the North Dakota Century Code, relating to pesticides; to repeal sections 4-35-17 and 4-35-29 of the North Dakota Century Code, relating to license plates for vehicles used in the application of certain pesticides and priority liability; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-05. Definitions.** As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. 3. "Certified applicator" means any individual who is certified under this chapter as authorized to purchase or use or supervise the use of any pesticide that is classified for a restricted use pesticide.
6. 4. "Commercial applicator" means a person who by contract or for hire engages in the business of applying pesticides for compensation to the land of another by aerial, ground, hand, or any other equipment. The term "commercial applicator" does not include a person using a pesticide for a private agricultural purpose unless that person is being compensated for the pesticide application.
7. "Dealer" means any person who sells a pesticide to an end user.
8. 5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. 6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
10. 7. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any

pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

- ~~44.~~ 8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
- ~~42.~~ 9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
- ~~43.~~ 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- ~~44.~~ 11. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~45.~~ 12. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- ~~46.~~ 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~47.~~ 14. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; and
  - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- ~~48.~~ 15. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

19. ~~"Mixture"~~ means a diluted pesticide combination.
20. 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
21. ~~"Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.~~
22. 17. "Pest" means:
- a. ~~Any~~ any insect, ~~snail, slug,~~ rodent, nematode, fungus, or weed; or
  - b. ~~Any~~ any other form of terrestrial or aquatic plant or animal life ~~or virus, viruses,~~ bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals ~~which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.~~
23. 18. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
24. 19. "Pesticide dealer" means any person ~~who distributes restricted use, other than a pesticide wholesaler, distributing pesticides.~~
25. 20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. 21. "Private applicator" means ~~an individual who is required to be a certified applicator who uses or supervises the use of any pesticide that is classified for to buy or use a restricted use, to produce any agricultural commodity pesticide~~ on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
27. ~~"Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.~~
28. 22. "Public applicator" means an applicator who applies pesticides, other than ready to use pesticides, as an employee of a state or federal:
- a. A governmental agency, municipal corporation, or public utility;; or

- b. ~~A hospital, privately owned golf course, nursery, or greenhouse, or other governmental agency. Persons using only ready-to-use pesticides are exempt from this requirement.~~
- ~~20.~~ 23. "Ready-to-use pesticide" means a pesticide ~~that other than a restricted use pesticide which~~ is applied directly from its original container consistent with label directions, ~~such as an~~ and includes aerosol spray can, a cans, ready-to-use spray ~~container~~ containers, bait packs, ~~or~~ and other types of containers that do not require mixing or loading before application.
- ~~30.~~ 24. "Restricted use pesticide" means any pesticide formulation ~~which~~ that is classified ~~for as~~ restricted use by the United States environmental protection agency. ~~The term also includes a pesticide formulation classified for restricted use by~~ or the agriculture commissioner under section 19-18-05.
- ~~34.~~ 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing ~~or pressure rinsing~~ pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~32.~~ "Snail" or "slug" includes every harmful mollusk.
- ~~33.~~ 26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~34.~~ 27. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~35.~~ 28. "Weed" means any plant which grows where not wanted.
- ~~36.~~ 29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

**SECTION 2. AMENDMENT.** Section 4-35-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-08. Classification of commercial certificates.** The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

**SECTION 3. AMENDMENT.** Section 4-35-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-09. Commercial and public applicator's certification.**

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial or a public applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. ~~Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.~~

**SECTION 4. AMENDMENT.** Section 4-35-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-09.1. Proof of financial responsibility - Exceptions.**

1. A commercial ~~pesticide~~ applicator certificate may not be issued ~~or renewed~~ unless the applicant furnishes proof of financial responsibility ~~as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial.~~ Financial responsibility must be maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall

immediately suspend the certification of a ~~person~~ commercial applicator who fails to maintain the ~~minimum~~ financial responsibility standards of this section. If there is any recovery against the ~~certificate holder~~ commercial applicator, the ~~holder~~ applicator shall demonstrate continued compliance with the ~~minimum standards~~ requirements of this section. ~~An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section.~~ An application for reinstatement of a ~~suspended~~ certificate suspended under this section must be accompanied by proof of ~~satisfaction of that~~ any judgment previously rendered against the applicant has been satisfied.

2. This section does not apply to:
  - a. A rancher who is ~~required to~~ must obtain a commercial ~~pesticide~~ applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - b. A grazing association and its members if either the association or any member is ~~required to~~ must obtain a commercial ~~pesticide~~ applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - c. A person ~~required to~~ who must be certified in the right-of-way category.
  - d. ~~An applicator who holds a~~ A commercial pesticide certificate and is controlling applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.
  - e. An employee of a commercial applicator if the commercial applicator complies with this section.

**SECTION 5. AMENDMENT.** Section 4-35-12 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-12. Pesticide dealer certification - Employees - Requirements for purchase.**

1. It is unlawful for ~~any person~~ a pesticide dealer to distribute ~~or sell~~ restricted use pesticides or ~~assume to~~ act as a restricted use pesticide dealer, ~~at any time~~, without first having obtained certification from the North Dakota state university extension service, or the service's designee ~~in the county in which the applicant operates the applicant's principal place of business.~~ A certified person is required ~~at each to be~~ at any location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, ~~registrant,~~ or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.
2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. ~~The board shall adopt rules governing service of process on members of~~

corporations, limited liability companies, partnerships, or associations, and governing the listing of membership in such organizations. The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements within each classification for which certification is sought as prescribed by the board.
4. Each ~~restricted use~~ pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to ~~denial~~, suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.
6. Restricted use pesticides may be sold only to:
  - a. Persons certified as applicators by this state; and
  - b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines that the certifying state's requirements are substantially similar to those of this state and further provided that the person does not use the restricted use pesticide in this state.

**SECTION 6. AMENDMENT.** Section 4-35-14 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-14. Private applicators - Certification.**

1. a. ~~No person~~ An individual who would be a private applicator, if certified, may ~~not buy; use, or supervise the use of~~ any restricted use pesticide ~~classified for restricted use unless such person the individual~~ first complies with the certification requirements ~~as determined~~ established by the board as ~~necessary to prevent~~

~~unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.~~

b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

(1) Complies with the certification requirements established by the board; or

(2) Is under the direct supervision of a certified applicator.

2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency.
3. ~~The board shall determine by rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly.~~ The North Dakota state university extension service, or its designee, ~~in the county of the residence of the applicant~~ shall issue a certificate to any private applicator who has qualified as prescribed by the board. ~~However, the~~ The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this ~~chapter section~~ to pay a reasonable ~~charge fee~~, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

**SECTION 7. AMENDMENT.** Section 4-35-15 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.** ~~The commissioner, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification issued under this chapter, if the commissioner finds that the applicant or the holder of the certification has committed any act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the~~ It is a violation of this chapter for any person to:

1. ~~Made~~ Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. ~~Made~~ Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. ~~Applied~~ Apply materials known by that person to be ineffective or improper.
4. ~~Operated~~ Operate faulty or unsafe equipment.
5. ~~Operated~~ Operate in a faulty, careless, or negligent manner.

6. ~~Refused~~ Neglect, or, after notice, ~~refused~~ refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. ~~Refused or neglected~~ Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. ~~Made~~ Make false or fraudulent records, invoices, or reports.
9. ~~Operated unlicensed equipment in violation of section 4-35-17.~~ Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. ~~Used~~ Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. ~~Refused or neglected~~ Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. ~~Aided or abetted a certified or an uncertified~~ Aid or abet a person to evade the provisions of this chapter, conspired conspire with such a certified or an uncertified a person to evade the provisions of this chapter, or allowed allow the person's certification to be used by another person.
13. Knowingly ~~made~~ make false statements during or after an inspection or an investigation.
14. ~~Impersonated~~ Impersonate a federal, state, county, or city inspector or official.
15. ~~Distributed~~ Distribute any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase the restricted use pesticide unless the person or agent to whom distribution is made is not properly certified to use or purchase that kind of restricted use the pesticide.
16. ~~Bought, used, or supervised~~ Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. ~~Applied~~ Apply any ~~economic poison~~ pesticide that is not registered pursuant to chapter 19-18.

**SECTION 8. AMENDMENT.** Section 4-35-16 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-16. Commercial and public applicators to keep records - Duration Records - Retention - Submission to commissioner.** The board shall require the holders of certificates to pesticide dealers, commercial applicators, and public applicators maintain records of sales and purchases of restricted use and special exemption pesticides and. The board shall require commercial applicators and public applicators to maintain records of all applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application

records of private applicators. ~~Such relevant information as the board may deem necessary may be specified by rule.~~ The records must be kept for a period of three years from the date of the application ~~of, sale, or purchase~~ of the pesticide ~~to which the records refer.~~ Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

**SECTION 9. AMENDMENT.** Section 4-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-18. Reciprocal agreement.** The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

**SECTION 10. AMENDMENT.** Section 4-35-19 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-19. Certification requirements - Exemptions.**

1. The certification requirements of this chapter do not apply to a ~~competent person~~ an individual applying ~~general non-restricted~~ use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is ~~deemed to be~~ applied under the direct supervision of a commercial applicator if the pesticide is applied by a ~~competent person~~ an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.
2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

**SECTION 11. AMENDMENT.** Section 4-35-20 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-20. Discarding and storing of pesticides, pesticide containers, and pesticide rinsate.** No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

**SECTION 12. AMENDMENT.** Section 4-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-22. Subpoenas.** The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications ~~and, sales, and purchases~~ in the state in any hearing ~~affecting the authority or privilege granted by a certification issued under the provisions of~~ to enforce this chapter.

**SECTION 13. AMENDMENT.** Section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-23. Penalties.**

1. Any ~~registrant; applicator, person other than a private applicator; wholesale dealer; retailer; or other distributor,~~ who knowingly violates ~~any provision of~~ this chapter ~~shall be~~ is guilty of a class A misdemeanor.
2. Any private applicator ~~or other person not included in subsection 4~~ who knowingly violates ~~any provision of~~ this chapter ~~shall be~~ is guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates ~~a provision of~~ this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.
5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

**SECTION 14. AMENDMENT.** Section 4-35-24 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-24. Enforcement.**

1. The commissioner ~~is charged with the duty of enforcing~~ shall enforce the requirements of this chapter and any rules ~~or regulations issued hereunder~~ adopted under this chapter.
2. The commissioner may bring an action to enjoin the violation or threatened violation of ~~any provision~~ of this chapter, or any rule ~~or regulation made pursuant to~~ adopted under this chapter, in the district court of the county in which such violation occurs or is about to occur.
3. ~~In the event~~ If any person violates ~~any provision~~ of this chapter, the commissioner may issue an order requiring ~~such~~ the person to cease and desist from the unlawful activity. ~~In the event~~ If the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.
4. ~~For the purpose of carrying out the provisions of this chapter, the~~ The commissioner may enter upon any public or private premises at reasonable times, in order to:
  - a. ~~Have access for the purpose of inspecting~~ Inspect any equipment subject to this chapter and the premises on which ~~such~~ the equipment is stored or used.
  - b. Inspect or sample lands actually or reported to be exposed to pesticides.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or land.
  - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the ~~applicator~~ owner for values less than three dollars. ~~If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.~~
  - f. Observe the use and application of a pesticide.
  - g. ~~Have access for the purpose of inspecting~~ Inspect any premises or ~~other~~ place where pesticides or devices are stored or held for distribution, sale, or for use ~~or for the purpose of inspecting and obtaining, and obtain~~ samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for ~~such~~ the pesticides.
5. a. The commissioner ~~shall~~, at any reasonable time, ~~have~~ has access to the records pertaining to the pesticide application ~~and~~, sales of, purchases, and repackaging by any person. The commissioner may copy or make copies of ~~such~~ the records for the purpose of ~~carrying out the provisions of this chapter. Unless required for the enforcement of this chapter, such information is~~ These records are

confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record that the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.

- b. If an individual alleges exposure to pesticides and if the individual's medical provider requests that the commissioner reveal the name of the pesticide, the commissioner may reveal the name of the pesticide to the individual making the request, together with the registration number assigned by the United States environmental protection agency. The commissioner may require that a request under this section be made in writing.
6. ~~When~~ If access is refused or in situations in which if the commissioner ~~feels~~ determines that critical enforcement documentation may be lost, the commissioner ~~or the commissioner's designated agent for the purposes set forth in this chapter,~~ may apply to any court of competent jurisdiction for a search warrant authorizing access to ~~such~~ land or records for said purposes. The court may, upon ~~such application and upon~~ compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.
7. ~~If a civil penalty pursuant to section 4-35-23 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the~~ The commissioner may suspend or revoke a certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

**SECTION 15. REPEAL.** Sections 4-35-17 and 4-35-29 of the North Dakota Century Code are repealed.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 78****HOUSE BILL NO. 1150**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to repeal chapter 4-38 of the North Dakota Century Code, relating to organic foods standards.

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

**SECTION 1. REPEAL.** Chapter 4-38 of the North Dakota Century Code is repealed.

Approved March 24, 2009

Filed March 24, 2009

## CHAPTER 79

### HOUSE BILL NO. 1549

(Representatives Monson, Porter, Uglem)  
(Senators Dever, J. Lee, Lindaas)

AN ACT to amend and reenact section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-41-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.**

1. Any person desiring to grow or process industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
2. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for

supervision of the industrial hemp during its growing, harvesting, and processing. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the commissioner's operating fund and are appropriated to the commissioner to be used to enforce this chapter.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 24, 2009  
Filed April 29, 2009

# AGRICULTURE

## CHAPTER 80

### HOUSE BILL NO. 1025

(Legislative Council)  
(Agriculture Committee)

AN ACT to create and enact title 4.1 of the North Dakota Century Code, relating to agriculture; to amend and reenact sections 4-13.2-03, 36-04-10, 36-04-10.1, and 36-05-13.2 and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to agricultural commodity boards and commissions; to repeal chapters 4-10.1, 4-10.2, 4-10.3, 4-10.4, 4-10.5, 4-10.6, 4-10.7, 4-12.1, 4-13.1, 4-27, 4-28, and 4-34 of the North Dakota Century Code, relating to the North Dakota potato council and assessment, the North Dakota oilseed council and assessment, the North Dakota dry bean council and assessment, the North Dakota barley council and assessment, the North Dakota soybean council and assessment, the North Dakota corn utilization council and assessment, the North Dakota dry pea and lentil council and assessment, the North Dakota honey assessment, the North Dakota turkey assessment, the North Dakota dairy promotion commission and assessment, the North Dakota wheat commission and assessment, and the North Dakota beef commission and assessment; to provide a penalty; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-13.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-13.2-03. Purposes - Duties.** The agriculture commissioner may adopt rules pursuant to chapter 28-32 to effectuate the purposes of this chapter, and the agriculture commissioner, or the commissioner's designee, shall enforce this chapter. The agriculture commissioner shall:

1. Work toward improving poultry breeding and cooperate with the board of animal health in controlling and eradicating communicable diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the bureau of animal industry, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.

4. Promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state through such means and in such manner as may be deemed by the commissioner conducive to such improvement.
5. Enforce the licensing and bonding requirements provided by this chapter.
6. Administer chapter ~~4-13-4~~ 4.1-12, at the advice of the North Dakota turkey federation.

<sup>46</sup> **SECTION 2.** Chapter 4.1-02 of the North Dakota Century Code is created and enacted as follows:

**4.1-02-01. Definitions.** As used in this chapter:

1. "Barley" means all varieties of barley harvested in the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Council" means the North Dakota barley council.
4. "First purchaser" means any person accepting for shipment or otherwise acquiring barley from a producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, if the actual or constructive possession of the barley is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-02-16 during the preceding twelve months.
6. "Producer" means any person that:
  - a. Plants or causes to be planted a barley crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-02-02. Barley council - Districts.** The state consists of the following five barley districts:

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<sup>46</sup> Section 4.1-02-01 was also amended by section 9 of House Bill No. 1109, chapter 70; section 4.1-02-03 was also amended by section 10 of House Bill No. 1109, chapter 70; section 4.1-02-09 was also amended by section 11 of House Bill No. 1109, chapter 70, and section 18 of Senate Bill No. 2242, chapter 72; section 4.1-02-12 was also amended by section 2 of Senate Bill No. 2203, chapter 81.

1. Benson, Cavalier, Pembina, Ramsey, Towner, and Walsh Counties.
2. Eddy, Foster, Grand Forks, Griggs, McLean, Nelson, Sheridan, Steele, Traill, and Wells Counties.
3. Barnes, Burleigh, Cass, Dickey, Emmons, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, and Stutsman Counties.
4. Bottineau, McHenry, Pierce, Renville, and Rolette Counties.
5. Adams, Billings, Bowman, Burke, Divide, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Mountrail, Oliver, Sioux, Slope, Stark, Ward, and Williams Counties.

#### **4.1-02-03. Council - Membership - Election - Term.**

1. The council consists of one individual elected from each district established in section 4.1-02-02 and the commissioner, who is a nonvoting member.
2. Each member of the council, other than the commissioner, must be a resident of and a participating producer in the district that the member represents.
3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
5. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

#### **4.1-02-04. Election of county representative.**

1.
  - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of barley producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
  - c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.

- e. Any participating producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no barley producers willing to serve as county representatives reside within the county.

**4.1-02-05. Election of district representative - Council member.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-02-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-02-06. Election costs - Responsibility.** All costs of holding county and district elections are the responsibility of the council.

**4.1-02-07. Quorum.** A majority of the council's voting members constitutes a quorum for the transaction of business.

**4.1-02-08. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-02-09. Council members - Compensation.** Each member of the council, except the commissioner, is entitled to receive compensation in the amount established by the council, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**4.1-02-10. Council - Powers.**

1. The council may:
  - a. Expend moneys collected pursuant to this chapter for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services, to carry out this chapter;
  - d. Contract with any person for any purpose permitted under this chapter;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer this chapter.
2. The council may not engage in a commercial business enterprise.

**4.1-02-11. Council - Duties.**

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include:
  - a. The funding of research, education programs, and market development efforts; and
  - b. The support of state, regional, national, and international entities that promote barley utilization.
2. The council shall develop and disseminate information regarding the purpose of the barley assessment and ways in which the assessment benefits barley producers.

**4.1-02-12. Assessment.** An assessment at the rate of ten mills per bushel [35.24 liters] is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state. The assessment does not apply to barley grown by a producer and used by the producer as livestock feed.

**4.1-02-13. Collection of assessment - Records.**

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the barley being purchased by the first purchaser.
2. The first purchaser shall keep documents regarding all purchases, sales, and shipments of barley for a period of three years. The first purchaser shall make these records available to the council for examination at all reasonable times.
3. No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall file with the council a report stating the quantity of all barley received, sold, or shipped by the first purchaser.

**4.1-02-14. Submission of assessments - Civil penalty.**

1. The first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the conclusion of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-02-15. Out-of-state sale - Submission of assessment by producer - Civil penalty.**

1. If a producer sells barley to a first purchaser located outside this state and if the first purchaser has not contracted with the barley council to collect and remit assessments in accordance with this chapter, the producer shall determine the assessment due and shall submit that amount to the council within thirty days after the conclusion of the calendar quarter. The producer shall keep a record of the transaction for a period of three years and shall make the record available to the council for examination upon request.
2. If a producer fails to submit an assessment as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-02-16. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-02-17. Reimbursement for double payments.** Notwithstanding section 4.1-02-16, if a producer documents to the council that the producer has paid the assessment more than once on the same barley, the council shall reimburse the producer for the double payment.

**4.1-02-18. Expenditure of funds.** The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-02-19. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the barley fund. All moneys in the barley fund are appropriated on a continuing basis to the council to carry out this chapter.

**4.1-02-20. Advisory referendum.**

1.
  - a. When petitioned to do so by at least fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
  - b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
3. Each ballot must include a statement indicating:
  - a. The date on which the petition was filed and the number of signatures on the petition;
  - b. The date, time, and location at which the council will open and tabulate the ballots;
  - c. The last date by which the ballots must be postmarked or filed with the council; and
  - d. That any participating producer may be present at the time the ballots are opened and tabulated.
4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
5. If a majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit a bill to the next legislative assembly to amend this chapter.

**4.1-02-21. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>47</sup> **SECTION 3.** Chapter 4.1-03 of the North Dakota Century Code is created and enacted as follows:

**4.1-03-01. Definitions.** As used in this chapter:

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<sup>47</sup> Section 4.1-03-08 was also amended by section 19 of Senate Bill No. 2242, chapter 72.

1. "Beef producer" means any person that has an ownership interest in cattle.
2. "Cattle" means live domesticated bovine animals.
3. "Cattle feeder" means a person in the business of feeding cattle for the purpose of adding weight to the cattle prior to slaughter.
4. "Commission" means the North Dakota beef commission.
5. "Dairy producer" means any person in the business of producing and selling milk from cows.
6. "Livestock auction market" means a public market or private buying station in which livestock is offered for sale or sold.
7. "Livestock dealer" means a person that purchases cattle and is required to be licensed under chapter 36-04.
8. "Participating producer" means a producer that has not obtained a refund of any assessment paid on the sale of cattle under this chapter for the preceding three years.

**4.1-03-02. North Dakota beef commission - Membership - Qualifications.**

1. The North Dakota beef commission consists of:
  - a. Three beef producers;
  - b. One cattle feeder;
  - c. One dairy producer;
  - d. One representative of a public livestock market; and
  - e. Three at-large representatives.
2. The governor shall appoint:
  - a. Each beef producer from a list of at least two names submitted by the North Dakota stockmen's association;
  - b. The cattle feeder from a list of at least two names submitted by the North Dakota stockmen's association feeder council;
  - c. The dairy producer from a list of at least two names submitted by the milk producers association of North Dakota;
  - d. The representative of a public livestock market from a list of at least two names submitted by the North Dakota livestock marketing association; and
  - e. The three at-large representatives.
3. a. Each member of the commission must:

- (1) Be a United States citizen and a resident of this state;
  - (2) Be actively engaged in that phase of the cattle industry the member represents; and
  - (3) Have been actively engaged in that phase of the cattle industry for a period of five years.
- b. Each member of the commission, except the representative of a public livestock market, must be a participating producer.
- c. For purposes of this subsection, "actively engaged" means that the individual:
- (1) Has an ownership interest in an operation that is of sufficient scope and significance as to constitute a distinct activity; and
  - (2) Has and regularly exercises direct control of the operation.

#### **4.1-03-03. Term of office.**

1. The term of office for each member is three years and begins on July first. The terms must be staggered so that no more than three terms expire each year.
2. A member of the commission may not serve more than two consecutive terms. If an individual is appointed after August 1, 2009, to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

**4.1-03-04. Vacancy.** If a member's office is vacant, the position must be filled, for the remainder of the term, in the same manner as the original appointment. A member's office is vacant if:

1. At any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter;
2. Any event enumerated in section 44-02-01 occurs; or
3. The commission determines that a member has failed to attend three consecutive meetings of the commission without justification.

**4.1-03-05. Nonvoting members - Appointment.** The commission may appoint up to four nonvoting members. The term of office for a member appointed under this section is one year. The number of terms that may be served by a member under this section is not limited. The commission shall adopt policies governing the appointments and qualifications of nonvoting members.

**4.1-03-06. Quorum.** A majority of the commission's voting members constitutes a quorum for the transaction of business.

#### **4.1-03-07. Chairman - Meetings.**

1. Annually, the commission shall elect one member to serve as the chairman.

2. The chairman shall call all meetings of the commission and shall call a special meeting within seven days when petitioned to do so by three voting members of the commission.
3. The commission shall hold at least three regular meetings each year.

**4.1-03-08. Commission members - Compensation.** Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties as directed by the commission.

**4.1-03-09. Commission - Powers.** The commission may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter;
5. Borrow money, provided the total of all the commission's debt may not exceed its estimate of the current year's revenues;
6. Sue and be sued; and
7. Do all things necessary and proper to enforce and administer this chapter.

**4.1-03-10. Commission - Duties.** The commission shall:

1. Establish and maintain an office centrally located within this state;
2. Keep accurate records of all assessments and other financial transactions under this chapter; and
3. Determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of state, regional, national, and international organizations.

**4.1-03-11. Assessment - Penalty.**

1. Any person who sells cattle in this state or from this state must pay an assessment equal to the greater of:
  - a. Fifty cents for each animal sold; or
  - b. The amount set forth in federal law.
2. The assessment provided for in subsection 1 does not apply to cattle owned by a person who certifies to the commission, on forms provided by the commission, that:

- a. The person's only share in the proceeds of a sale is a sales commission, handling fee, or other service fee; or
- b.
  - (1) The person acquired ownership of the cattle to facilitate the transfer of ownership to a third party;
  - (2) The person resold the cattle within ten days from the date on which the person acquired ownership; and
  - (3) Any assessment that was levied upon the prior owner has been collected and remitted or will be remitted in a timely fashion.
3. Any person willfully providing false or misleading information to the commission under this section is guilty of a class B misdemeanor.

#### **4.1-03-12. Collection of assessment.**

1. Each livestock auction market and livestock dealer shall:
  - a. Collect the assessments due under this chapter by deducting the assessments from any credit given or payment made to the seller of the cattle, at the time of the transaction; and
  - b. Forward the assessments to the commission in accordance with section 4.1-03-13.
2.
  - a. If a person sells North Dakota cattle outside this state or if a person sells North Dakota cattle to an out-of-state buyer, the person shall forward any assessments due under this chapter to the commission in accordance with section 4.1-03-13.
  - b. This subsection does not apply if the assessment has been paid to a brand inspector in another state or to another qualified state beef council.
3. Any other person selling cattle in this state shall forward any assessments due under this chapter to the commission in accordance with section 4.1-03-13.

#### **4.1-03-13. Submission of assessments - Penalty.**

1. Any person required to forward assessments to the commission in accordance with section 4.1-03-12 shall do so no later than the fifteenth day of the month following that in which the cattle were sold.
2. Any unpaid assessments due pursuant to this chapter must be increased by two percent on the sixteenth day of each month.
3. Any person who fails to forward assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor.
4. For purposes of this section, an assessment is deemed to have been forwarded to the commission:

- a. On the date of its postmark if mailed;
- b. On the date of its verified shipment if sent by courier; or
- c. On the date of its receipt by the commission if delivered personally or electronically.

#### **4.1-03-14. Transaction records - Inspection by commission.**

1. Any person required to collect or submit an assessment under this chapter shall keep a record of:
  - a. The number of cattle:
    - (1) Purchased;
    - (2) Initially transferred; and
    - (3) Otherwise subject to assessment under this chapter;
  - b. The date of any transaction involving cattle referenced in subdivision a;
  - c. The name of the person who sold the cattle;
  - d. The number of cattle imported or the equivalent of beef or beef products;
  - e. The amount of any assessment forwarded;
  - f. The reason for any discrepancy between the amount forwarded and the dollar amount obtained when multiplying the number of cattle referenced in subdivision a by the per head assessment; and
  - g. The date on which any assessment was paid.
2. All records required by this section and any records required to verify other information provided to the commission in accordance with this chapter must be:
  - a. Maintained for a period of at least three years; and
  - b. Made available for inspection by the commission upon request.

#### **4.1-03-15. Authorization to request records - Penalty.**

1. The commission may require the purchaser of cattle subject to assessment under this chapter to furnish the commission with a list of persons from whom cattle were purchased.
2. Any person knowingly refusing to furnish the commission with required information is guilty of a class B misdemeanor.

**4.1-03-16. Continuing appropriation.** The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota beef commission fund. All moneys in the North Dakota beef commission

fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

**4.1-03-17. Refund of assessment - Required certification by attorney general.**

1. When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by federal law, the commission may provide refunds to producers.
2. a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the sale.
  - b. The producer must complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the sale. The commission shall then refund the net amount of the assessment that had been collected.
  - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

**4.1-03-18. Open records exceptions.**

1. The following are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
  - a. Records furnished to the commission pursuant to section 4.1-03-14;
  - b. Records furnished to the commission pursuant to section 4.1-03-15; and
  - c. The identity of a person that applied for a refund under section 4.1-03-17 and the amount of the refund requested.
2. This section does not preclude the commission from:
  - a. Issuing general statements based upon the reports of persons subject to this chapter; or
  - b. Publishing the name of any person found guilty of violating this chapter and describing the offense committed.

<sup>48</sup> **SECTION 4.** Chapter 4.1-04 of the North Dakota Century Code is created and enacted as follows:

**4.1-04-01. Definitions.** As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Corn" means all varieties of corn, except sweet corn and popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means:
  - a. Any public warehouse, licensed grain buyer, roving grain buyer, processing plant, merchandising company, or ethanol plant that purchases corn from a producer; and
  - b. Any person having a claim against the producer if the actual or constructive possession of the corn is taken as security, partial payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Producer" means any person that:
  - a. Plants or causes to be planted a corn crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-04-02. Corn districts - Establishment.** The state consists of the following seven corn districts:

1. Richland County;
2. Cass, Steele, and Traill Counties;
3. Benson, Bottineau, Burke, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties;
4. Barnes, Eddy, Foster, Griggs, and Stutsman Counties;
5. Sargent and Ransom Counties;

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<sup>48</sup> Section 4.1-04-04 was also amended by section 4 of House Bill No. 1413, chapter 82; section 4.1-04-07 was also amended by section 20 of Senate Bill No. 2242, chapter 72; section 4.1-04-10 was also amended by section 6 of House Bill No. 1413, chapter 82.

6. Dickey and LaMoure Counties; and
7. All remaining counties in which corn is grown.

**4.1-04-03. Corn council - Membership - Term.**

1. The council consists of one producer elected from each of the seven districts established in section 4.1-04-02.
2. Each member of the council must be a resident of the district that the member represents.
3. A member of the council may not have requested a refund under section 4.1-04-13 during the preceding year.
4. The term of each member is four years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

**4.1-04-04. Election of council member.**

1. No later than January first of the year in which the term of a council member is to expire, the council shall appoint a nominating committee consisting of at least two producers who reside in the council member's district and who have not requested a refund under section 4.1-04-13 during the preceding year.
2. No later than February first, the committee shall nominate a qualified producer as a candidate for council membership.
3. Other qualified producers may become candidates for council membership by submitting to the council, no later than March first, a petition signed by at least five producers who reside in the district to be represented.
4. a. If a qualified producer submits a petition in accordance with subsection 3, the council shall:
  - (1) Determine the date, time, and place for the election;
  - (2) Publish that information in the official newspaper of each county in the district for two consecutive weeks;
  - (3) Prepare the ballots; and

(4) Conduct the election.

- b. If a qualified producer does not submit a petition in accordance with subsection 3, and the only candidate for council membership is the individual recommended by the nominating committee, the council shall waive the election requirements and declare that the individual recommended by the nominating committee is the new council member.
5. Any producer who resides in the district and who did not request a refund under section 4.1-04-13 during the preceding year may vote in the election.
6. The council shall provide to the governor the name and address of the new council member.

**4.1-04-05. Election costs - Responsibility.** All costs of holding an election are the responsibility of the council.

**4.1-04-06. Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-04-07. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officials if the member is attending meetings or performing duties directed by the council.

**4.1-04-08. Council - Powers.** The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter, including research, education, publicity, promotion, and transportation;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

**4.1-04-09. Council - Duties.**

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as

well as participation in programs under the auspices of other state, regional, national, and international promotion groups.

2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.

**4.1-04-10. Assessment.** Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be imposed upon all corn grown and sold in this state.

**4.1-04-11. Collection of assessment - Records.**

1. A designated handler shall collect the assessment from the producer by deducting the assessment from the purchase price of the corn.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of corn for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report with the council. The report must state, in individual and total amounts, the quantity of all corn that the designated handler received, sold, or shipped, and the source of all corn that the designated handler received, sold, or shipped.

**4.1-04-12. Submission of assessment by producer - Civil penalty.**

1. If a producer sells corn to a person that is not a designated handler, the producer shall forward the assessment to the council within thirty days after the end of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

**4.1-04-13. Refund of assessment - Form.**

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund to the producer the net amount of the assessment that had been collected from the producer.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-04-14. Reimbursement for double payments.** Notwithstanding section 4.1-04-13, if a producer documents to the council that the producer has paid the assessment more than once on the same corn, the council shall reimburse the producer for the double payment.

**4.1-04-15. Submission of assessments - Civil penalty.**

1. Each designated handler shall forward to the council all assessments collected by the designated handler within thirty days after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

**4.1-04-16. Expenditures - Approval - Records.** The council shall approve all expenditures made pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the records must be maintained as directed by the state records administrator.

**4.1-04-17. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the corn fund. All moneys in the corn fund are appropriated on a continuing basis to the council to be used exclusively to carry out this chapter.

**4.1-04-18. Advisory referendum.**

1.
  - a. When petitioned to do so by fifteen percent of the producers, the council shall conduct a referendum among the producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
  - b. To be considered a valid petition, no more than fifty percent of the producers who signed the petition may reside in one district.
2. The council shall determine the date on which in-person voting will take place.
3. The council shall prepare the ballots and make the ballots available to producers at each county extension office in the state.
4. Each ballot must include a statement indicating:
  - a. The date, time, and location at which the council will open and tabulate the ballots; and
  - b. That any producer may be present at the time the ballots are opened and tabulated.
5.
  - a. Beginning no sooner than thirty days before the date established for in-person voting in accordance with subsection 2, the council also shall provide absentee ballots upon request to producers who expect to be absent from their county of residence on the date established for in-person voting in accordance with subsection 2.

- b. The council shall include with each absentee ballot requested a form indicating that the producer is eligible to participate in the referendum. The form must be signed by the absentee producer and returned with the absentee ballot.
  - c. In order to be counted, an absentee ballot and the voter's statement of eligibility must be received by the council at least forty-eight hours before the time at which the council stated it would open and tabulate ballots.
6. If a majority of the producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly to amend this chapter.

**4.1-04-19. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>49</sup> **SECTION 5.** Chapter 4.1-05 of the North Dakota Century Code is created and enacted as follows:

**4.1-05-01. Definitions.** As used in this chapter:

- 1. "Commission" means the North Dakota dairy promotion commission.
- 2. "Dairy product" means a product for human consumption which is derived from the processing of milk from cows. The term includes a milk product normally consumed in liquid form as a beverage.
- 3. "Dealer" means any person that handles, ships, buys, or sells dairy products, or who acts as a sales or purchasing agent, broker, or factor of dairy products.
- 4. "Gross receipts" means the amount paid to a producer for milk or for a product derived from milk and sold by such producer.
- 5. "Processor" means a person that takes delivery of milk or cream and then:
  - a. Cans, dries, prepares, or packages the milk or cream; or
  - b. Produces another product from the milk or cream.
- 6. "Producer" means a person engaged in the production of milk from cows for commercial use.

**4.1-05-02. North Dakota dairy promotion commission - Membership - Terms.**

- 1. The North Dakota dairy promotion commission consists of the following voting members:

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<sup>49</sup> Section 4.1-05-05 was also amended by section 21 of Senate Bill No. 2242, chapter 72.

- a. Two producers appointed by the governor from a list of nominees submitted by the milk producers association of North Dakota;
  - b. The chairman of the North Dakota division of the midwest dairy association; and
  - c. Two individuals who are members of and elected by the North Dakota division of the midwest dairy association.
2. a. The term of each producer appointed by the governor is two years and must be staggered so that the term of only one producer expires each year.
  - b. The term of each individual who is a member of and elected by the North Dakota division of the midwest dairy association is two years and must be staggered so that the term of only one individual expires each year.
3. Each term of office begins July first.
  4. Whenever an association is required by subsection 1 to submit nominees to the governor, that association shall submit at least two nominees for each position to be filled.

**4.1-05-03. Nonvoting members - Appointment.** The commission may appoint up to four nonvoting members. The commission shall adopt policies governing the appointments and qualifications of nonvoting members.

**4.1-05-04. Election of chairman and officers - Meetings.**

1. Annually, the commission shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the commission and shall call a special meeting of the commission within seven days when petitioned to do so by three commission members.
3. Annually, the commission shall elect other officers, including a vice chairman and a secretary-treasurer.

**4.1-05-05. Commission members - Compensation.** Each member of the commission is entitled to receive compensation, in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The compensation provided for in this section may not be paid to any member of the commission who receives a salary or other compensation as an employee or official of this state if the individual is serving on the commission by virtue of the individual's state office or state employment.

**4.1-05-06. Commission - Powers.** The commission may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;

3. Accept gifts, grants, and donations of money, property, and services, to carry out this chapter;
4. Contract with any person for any purpose permitted under this chapter;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

**4.1-05-07. Commission - Duties.** The commission shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, to promote the increased sale and consumption of dairy products, as well as participation in programs under the auspices of state, regional, national, and international dairy promotion groups.

**4.1-05-08. Assessment - Collection.**

1. Each producer must pay an assessment of ten cents per hundredweight [45.36 kilograms] on all milk sold by the producer and on any milk used by the producer to manufacture other products.
2. All assessments imposed by this section:
  - a. Must be collected by the first dealer or processor by deducting the amount of the assessment from the producer's gross receipts; or
  - b. Are payable by the producer upon sale of the milk products by the producer directly to the consumer.

**4.1-05-09. Submission of assessments - Civil penalty.**

1. Any person in possession of assessments required by this section shall forward the assessments to the commission on or before the final day of the month following the month in which the milk or milk products were marketed.
2. If a person fails to submit the assessments imposed by this chapter to the commission as required by this section, the commission may assess a one-time penalty equal to one and one-half percent of the amount of the assessment.

**4.1-05-10. Record retention.** Any person responsible for the collection and submission of assessments under this chapter shall keep a record of all gross receipts subject to the assessment. These records must be retained for a period of three years from the date of the transaction and are subject to inspection by the commission.

**4.1-05-11. Reports.**

1. Any person required by section 4.1-05-10 to keep a record shall:
  - a. Submit to the commission a form indicating:

- (1) The amount of milk that was subject to the assessment during the preceding month; and
  - (2) Any other information that the commission requests; and
- b. Retain a copy of the form for a period of three years from the date of the submission.
2. Any dealer or processor required to submit a form under this section shall make the form available upon request to any producer who sold milk to the dealer or processor.

**4.1-05-12. Refund of assessment - Required certification by attorney general.**

1. When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by the Dairy Research and Promotion Act [7 U.S.C. 4501 et seq.] or by any other applicable law, the commission may provide refunds to producers.
2.
  - a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for refund application within sixty days after the date of the assessment or final settlement.
  - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the assessment or final settlement. The commission shall then refund the net amount of the assessment that had been collected.
  - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

**4.1-05-13. Expenditure of funds.** The commission shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-05-14. Continuing appropriation.** The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota dairy promotion commission fund. All moneys in the North Dakota dairy promotion commission fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

**4.1-05-15. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>50</sup> **SECTION 6.** Chapter 4.1-06 of the North Dakota Century Code is created and enacted as follows:

**4.1-06-01. Definitions.** As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry bean council.
3. "Designated handler" means any person that initially places dry beans into the channels of trade and commerce or any person that is engaged in the processing of beans into food for human consumption. The term does not include a producer selling the producer's unharvested dry beans or delivering the producer's dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state.
4. "Dry beans" mean all varieties of dry beans harvested in this state. The term does not include soybeans.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-06-15 during the preceding twelve months.
6. "Producer" means any person that:
  - a. Plants or causes to be planted a dry bean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-06-02. Dry bean districts - Establishment.** The state consists of the following six dry bean districts:

1. Cavalier, Pembina, and Towner Counties.
2. Ramsey and Walsh Counties.
3. Grand Forks and Nelson Counties.
4. Griggs, Steele, and Traill Counties.
5. Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, and Stutsman Counties.

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<sup>50</sup> Section 4.1-06-03 was also amended by section 12 of House Bill No. 1109, chapter 70; section 4.1-06-08 was also amended by section 22 of Senate Bill No. 2242, chapter 72.

6. Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams Counties.

#### **4.1-06-03. North Dakota dry bean council - Membership - Term.**

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02 and the commissioner, who is a nonvoting member.
2. Each member of the council must be a United States citizen.
3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

#### **4.1-06-04. Election of council member.**

1. Each year during the month of February the commissioner shall identify the districts represented by council members whose terms are about to expire.
2.
  - a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.
  - b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by ten other producers.
3. For a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner which may not be later than March tenth.
4. The commissioner shall prepare election ballots and mail the ballots to the producers in the district together with a statement indicating:
  - a. The last date by which the ballots must be postmarked or filed with the council;



**4.1-06-10. Council - Duties.**

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international commodity councils.
2. The council shall develop and disseminate information regarding the purpose of the dry bean assessment and ways in which the assessment benefits dry bean producers.

**4.1-06-11. Designated handler - Certificate.**

1. Before a designated handler may sell, process, or ship dry beans, the designated handler shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the designated handler is transacting business within this state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
  - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
  - b. If the designated handler is a partnership, the application must include the names and addresses of the persons constituting the partnership.
  - c. If the designated handler is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The designated handler shall notify the council whenever there is a change of information required by this section.

**4.1-06-12. Assessment.**

1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] must be imposed upon all dry beans grown in this state, delivered into this state, or sold to a designated handler.
2. The assessment imposed by this section does not apply to dry bean seeds nor to dry beans used for purposes other than human consumption.

**4.1-06-13. Collection of assessment - Records.**

1. The designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the dry beans being purchased by the designated handler.

2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw dry beans for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report stating, in individual and total amounts, the quantity of all dry beans that the handler received, sold, or shipped, and the source of all dry beans that the handler received, sold, or shipped.

**4.1-06-14. Submission of assessments - Civil penalty.**

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-06-15. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund to the producer the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-06-16. Reimbursement for double payment.** Notwithstanding section 4.1-03-15, if a producer documents to the council that the producer has paid the assessment more than once on the same dry beans, the council shall reimburse the producer for the double payment.

**4.1-06-17. Expenditure of funds.** The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-06-18. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the dry bean fund. All moneys in the dry bean fund are appropriated on a continuing basis to the council to be used to carry out this chapter.

**4.1-06-19. Advisory referendum.**

1.
  - a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
  - b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
3. Each ballot must include a statement indicating:
  - a. The date on which the petition was filed and the number of signatures on the petition;
  - b. The date, time, and location at which the council will open and tabulate the ballots;
  - c. The last date by which the ballots must be postmarked or filed with the council; and
  - d. That any participating producer may be present at the time the ballots are opened and tabulated.
4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
5. If the majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit a bill to the next legislative assembly to amend this chapter.

**4.1-06-20. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>51</sup> **SECTION 7.** Chapter 4.1-07 of the North Dakota Century Code is created and enacted as follows:

**4.1-07-01. Definitions.** As used in this chapter:

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<sup>51</sup> Section 4.1-07-01 was also amended by section 13 of House Bill No. 1109, chapter 70; section 4.1-07-03 was also amended by section 14 of House Bill No. 1109, chapter 70; section 4.1-07-08 was also amended by section 15 of House Bill No. 1109, chapter 70, and section 23 of Senate Bill No. 2242, chapter 72.

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. "Dry peas and lentils" include chickpeas, lupins, and fava beans.
4. "First purchaser" means any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. The term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-07-15 for at least three years.
6. "Producer" means any person that:
  - a. Plants or causes to be planted a dry pea and lentil crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-07-02. Dry pea and lentil districts - Establishment.** The state consists of the following five dry pea and lentil districts:

1. Burke, Divide, McKenzie, Mountrail, and Williams Counties.
2. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.
3. Benson, Bottineau, McHenry, Pierce, Renville, Rolette, Towner, and Ward Counties.
4. Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Sheridan, and Wells Counties.
5. Barnes, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Traill, and Walsh Counties.

**4.1-07-03. Dry pea and lentil council - Membership - Term.**

1. The council consists of one participating producer elected from each district established in section 4.1-07-02 and the commissioner.
2. Each member of the council must be a United States citizen.

3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

#### **4.1-07-04. Election of county representative.**

1.
  - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of dry pea and lentil producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
  - c. The meeting must be held within the county.
  - d. During the meeting the county extension agent shall conduct the election.
  - e. Any producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no dry pea and lentil producers willing to serve as county representatives reside within the county.

#### **4.1-07-05. Election of district representative - Council member.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-07-04, the director of the North Dakota state university

extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.

2. The director shall notify each county representative in the district of the meeting, by mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-07-06. Election costs - Responsibility.** All costs of holding county and district elections are the responsibility of the council.

**4.1-07-07. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-07-08. Council members - Compensation.** Except for the agriculture commissioner, each member of the council is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**4.1-07-09. Council - Powers.** The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services, to carry out this chapter;
4. a. Contract with the governmental entity that is responsible for administration of the dry pea and lentil assessment in another state or province and provide for:
  - (1) The return by that governmental entity of any assessment charged on dry peas and lentils grown in this state; and
  - (2) The return by the council of any assessment charged on dry peas and lentils grown in another state or province; and
- b. Contract with any person for any other purpose permitted under this chapter;
5. Sue and be sued; and

6. Do all things necessary and proper to enforce and administer this chapter.

#### **4.1-07-10. Council - Duties.**

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of the United States dry pea and lentil council.
2. The council shall develop and disseminate information regarding the purpose of the dry pea and lentil assessment and ways in which the assessment benefits dry pea and lentil producers.

#### **4.1-07-11. First purchaser - Certificate.**

1. Before a first purchaser of dry peas and lentils may sell, process, or ship any dry peas or lentils, the first purchaser shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the first purchaser is transacting business within this state, the first purchaser's place of business, and the location of loading and shipping places of the first purchaser's agents.
  - a. If the first purchaser is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
  - b. If the first purchaser is a partnership, the application must include the name of the partnership and the names and addresses of the persons constituting the partnership.
  - c. If the first purchaser is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The first purchaser shall notify the council whenever there is a change of information required by this section.

**4.1-07-12. Assessment.** An assessment at the rate of one percent of the net value of dry peas and lentils is levied upon all dry peas and lentils grown in the state or sold to a first purchaser.

#### **4.1-07-13. Collection of assessment - Records.**

1. A first purchaser shall collect the assessment from the producer by deducting the assessment from the net purchase price of the dry peas and lentils being purchased by the first purchaser.
2. Each first purchaser shall keep documents regarding all purchases, sales, and shipments of dry peas and lentils for a period of three years. The records may be examined by the council upon request.

3. At the time and in the manner prescribed by the council, each first purchaser shall file a report with the council stating, in individual and total amounts, the quantity and source of all dry peas and lentils that the first purchaser received, sold, or shipped.

**4.1-07-14. Submission of assessment - Civil penalty.**

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser no later than the thirtieth day after the end of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

**4.1-07-15. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council then shall refund to the producer the net amount of the assessment that had been collected from the producer.
3. If a request for refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-07-16. Reimbursement for double payment.** Notwithstanding section 4.1-07-15, if a producer documents to the council that the producer has paid the assessment more than once on the same dry peas or lentils, the council shall reimburse the producer for the double payment.

**4.1-07-17. Expenditure of funds.** The council shall approve all expenditures made pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the records must be maintained as directed by the state records administrator.

**4.1-07-18. Continuing appropriation.** All moneys received by the council under this chapter are appropriated on a continuing basis to the council to be used to carry out this chapter.

**4.1-07-19. Advisory referendum.**

1. a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by

- which the assessment imposed by this chapter should be raised or lowered.
- b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
  2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
  3. Each ballot must include a statement indicating:
    - a. The date on which the petition was filed and the number of signatures on the petition;
    - b. The date, time, and location at which the council will open and tabulate the ballots;
    - c. The last date by which the ballots must be postmarked or filed with the council; and
    - d. That any participating producer may be present at the time the ballots are opened and tabulated.
  4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
  5. If the majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly to amend this chapter.

**4.1-07-20. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

**SECTION 8.** Chapter 4.1-08 of the North Dakota Century Code is created and enacted as follows:

**4.1-08-01. Definitions.** As used in this chapter:

1. "Beekeeper" means any person owning or controlling a colony of bees for the production of honey, beeswax, or byproducts.
2. "Commissioner" means the agriculture commissioner.

**4.1-08-02. Assessment.** An annual assessment in the amount of five cents is imposed on each colony of honeybees licensed by the beekeeper. The minimum annual assessment is one dollar.

**4.1-08-03. Submission of assessments - Civil penalty.**

1. Each beekeeper shall submit the assessment required by section 4.1-08-02 to the commissioner at the same time the beekeeper submits the license application required by section 4-12.2-04.

2. If a beekeeper fails to submit the assessment as required by this section, the commissioner may impose a penalty equal to five percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-08-04. Refunds.**

1. To receive a refund of any assessment paid in accordance with this chapter, a beekeeper shall obtain an application form from the commissioner within sixty days from the date the commissioner received the assessment required by section 4.1-08-02.
2. The beekeeper shall return the completed form to the commissioner within ninety days from the date the commissioner received the assessment required by section 4.1-08-02.
3. A beekeeper is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-08-05. Continuing appropriation.** The commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special fund known as the honey fund. All moneys in the honey fund are appropriated on a continuing basis to the commissioner to carry out this chapter.

**4.1-08-06. Assessment - Authorized expenditures.** The assessment required by this chapter may be used to fund research, education programs, and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.

**4.1-08-07. Commissioner - Powers.** The commissioner may:

1. Expend moneys appropriated under this chapter for the purposes set forth in section 4.1-08-06, provided the commissioner first consults with a committee appointed by the North Dakota beekeepers' association; and
2. Do all things necessary and proper to enforce and administer this chapter.

**4.1-08-08. Biennial report - Information regarding honey assessments.** When compiling the biennial report required by section 54-06-04, the commissioner shall provide information regarding activities under this chapter, including the amount of assessments collected and the manner in which the moneys were expended.

**4.1-08-09. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>52</sup> **SECTION 9.** Chapter 4.1-09 of the North Dakota Century Code is created and enacted as follows:

**4.1-09-01. Definitions.** As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota oilseed council.
3. "First purchaser" means any person that buys, accepts for shipment, or otherwise acquires oilseeds from a producer. The term includes a mortgagee, pledgee, lienor, and any other person having a claim against a producer if the actual or constructive possession of the oilseed is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
4. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-09-19 during the preceding twelve months.
6. "Producer" means any person that:
  - a. Plants or causes to be planted an oilseed crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-09-02. Sunflower districts - Establishment.** The state consists of the following seven sunflower districts:

1. Cavalier, Grand Forks, Nelson, Pembina, Ramsey, and Walsh Counties.
2. Barnes, Cass, Griggs, Steele, and Traill Counties.
3. Dickey, LaMoure, Ransom, Richland, and Sargent Counties.
4. Burleigh, Emmons, Kidder, Logan, McIntosh, and Stutsman Counties.

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<sup>52</sup> Section 4.1-09-01 was also amended by section 16 of House Bill No. 1109, chapter 70; section 4.1-09-04 was also amended by section 17 of House Bill No. 1109, chapter 70; section 4.1-09-12 was also amended by section 18 of House Bill No. 1109, chapter 70, and section 24 of Senate Bill No. 2242, chapter 72; section 4.1-09-16 was also amended by section 2 of Senate Bill No. 2208, chapter 83.

5. Benson, Eddy, Foster, Pierce, Rolette, Sheridan, Towner, and Wells Counties.
6. Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties.
7. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.

**4.1-09-03. Canola districts - Establishment.** The state consists of the following three canola districts:

1. Adams, Billings, Bowman, Burke, Divide, Dunn, Golden Valley, Grant, Hettinger, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Renville, Sioux, Slope, Stark, Ward, and Williams Counties.
2. Benson, Bottineau, Burleigh, Dickey, Eddy, Emmons, Foster, Kidder, LaMoure, Logan, McHenry, McIntosh, Pierce, Rolette, Sheridan, Stutsman, and Wells Counties.
3. Barnes, Cass, Cavalier, Grand Forks, Griggs, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Towner, Traill, and Walsh Counties.

**4.1-09-04. North Dakota oilseed council - Membership - Term.**

1. The council consists of:
  - a. One participating sunflower producer elected from each of the seven districts established in section 4.1-09-02;
  - b. One participating canola producer elected from each of the three districts established in section 4.1-09-03;
  - c. One participating safflower producer appointed by the governor;
  - d. One participating flax producer appointed by the governor;
  - e. (1) One participating producer of an oilseed other than sunflowers, canola, safflowers, or flax, appointed by the governor; or  
(2) One participating producer of any oilseed, appointed by the governor, if the governor is unable to appoint a participating producer who meets the requirements of paragraph 1;
  - f. One individual appointed by the director of the agricultural experiment station; and
  - g. The agriculture commissioner, who is a nonvoting member.
2. Each member of the council who represents a district must be a resident of and participating producer in that district.
3. a. The term of each member who represents a sunflower district is three years and begins on April first following the member's

election. The terms of members who represent sunflower districts must be staggered so that:

- (1) No more than three expire in any one year; and
  - (2) The term of the member who represents Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is identical to that of the member who represents Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.
- b. The term of each member who represents a canola district is three years and begins on April first following the member's election. The terms of members who represent canola districts must be staggered so that no more than one term expires in any one year.
  - c. The term of each member who is appointed is three years and begins on April first following the member's appointment. The terms of members who are appointed must be staggered so that no more than two expire in any one year.
4. If at any time a member of the council ceases to possess any of the qualifications required by this section, the member's office is deemed vacant.
- a. If the office was held by an elected member, the remaining members of the council shall appoint another qualified producer for the remainder of the term.
  - b. If the office was held by a gubernatorial appointee, the governor shall appoint another qualified producer.
  - c. If the office was held by an appointee of the director of the agricultural experiment station, the director shall appoint another qualified individual.
5. A member of the council may not serve more than four consecutive terms.
6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

**4.1-09-05. Election of county representative - Sunflower producers - Waiver.**

1. a. No later than March first of the year in which the term of a council member who represents a sunflower district is to expire, the extension agent for each county in that member's district shall hold a meeting of sunflower producers for the purpose of electing a county representative.
- b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks.

- The last notice must be published no fewer than five nor more than ten days before the meeting.
- c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any participating sunflower producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no sunflower producers willing to serve as county representatives reside within the county.

**4.1-09-06. Election of county representative - Canola producers - Waiver.**

1. a. No later than March first of the year in which the term of a council member who represents a canola district is to expire, the extension agent for each county in that member's district shall hold a meeting of canola producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
  - c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any participating canola producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no canola producers willing to serve as county representatives reside within the county.

**4.1-09-07. Election of council member - Sunflower district representative.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-05, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the sunflower district represented by the member whose term is to expire.
2. The director shall notify each county representative in the sunflower district of the meeting, by mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-09-08. Election of council member - Canola district representative.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-06, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the canola district represented by the member whose term is to expire.
2. The director shall notify each county representative in the canola district of the meeting, by mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-09-09. Election costs - Responsibility.** All costs of holding county and district elections are the responsibility of the council.

**4.1-09-10. Quorum.** A majority of the council's voting members constitutes a quorum for the transaction of business.

**4.1-09-11. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-09-12. Council members - Compensation.** Each member of the council, except the agriculture commissioner and the individual appointed by the director of the agricultural experiment station, is entitled to receive compensation in

the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

#### **4.1-09-13. Council - Powers.**

1. The council may:
  - a. Expend moneys collected pursuant to this chapter for administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services, to carry out this chapter;
  - d. Contract with any person for any purpose permitted under this chapter;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer this chapter.
2. The council may not engage in a commercial business enterprise.

#### **4.1-09-14. Council - Duties.**

1. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of other state, regional, national, and international oilseed promotion councils.
2. The council shall develop and disseminate information regarding the purpose of the oilseed assessment and ways in which the assessment benefits oilseed producers.

#### **4.1-09-15. First purchaser - Certificate.**

1. Before a first purchaser may sell, process, or ship any oilseeds, the first purchaser shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the first purchaser is transacting business within this state, the first purchaser's place of business, and the location of loading and shipping places of the first purchaser's agents.
  - a. If the first purchaser is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
  - b. If the first purchaser is a partnership, the application must include the names and addresses of the persons constituting the partnership.

- c. If the first purchaser is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The first purchaser shall notify the council whenever there is a change of information required by this section.

#### **4.1-09-16. Assessment.**

1. An assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all oilseeds, other than flax, grown in this state or sold to a first purchaser.
2. An assessment at the rate of two cents per bushel [35.24 liters] is imposed upon all flax grown in this state or sold to a first purchaser.

#### **4.1-09-17. Collection of assessment - Records.**

1. The first purchaser shall collect the assessment from the producer by deducting the assessment from the total price of the oilseeds being purchased by the first purchaser.
2. Each first purchaser shall keep documents regarding all purchases, sales, and shipments of oilseeds for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each first purchaser shall file a report stating, in individual and total amounts, the quantity of all oilseeds that the first purchaser received, sold, or shipped.

#### **4.1-09-18. Submission of assessments - Civil penalty.**

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the end of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

#### **4.1-09-19. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund the net amount of the assessment that had been collected.

3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-09-20. Reimbursement for double payments.** Notwithstanding section 4.1-09-19, if a producer documents to the council that the producer has paid the assessment more than once on the same oilseeds, the council shall reimburse the producer for the double payment.

**4.1-09-21. Expenditure of funds.** The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-09-22. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the oilseed fund. All moneys in the oilseed fund are appropriated on a continuing basis to the council to carry out this chapter.

**4.1-09-23. Advisory referendum.**

1.
  - a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
  - b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
3. Each ballot must include a statement indicating:
  - a. The date on which the petition was filed and the number of signatures on the petition;
  - b. The date, time, and location at which the council will open and tabulate the ballots;
  - c. The last date by which the ballots must be postmarked or filed with the council; and
  - d. That any participating producer may be present at the time the ballots are opened and tabulated.
4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.

5. If the majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly.

**4.1-09-24. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>53</sup> **SECTION 10.** Chapter 4.1-10 of the North Dakota Century Code is created and enacted as follows:

**4.1-10-01. Definitions.** As used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota potato council.
3. "Designated handler" means a person that initially places potatoes into the channels of trade and commerce or a person who processes potatoes into food for human consumption.
4. "Participating producer" means a producer that has not gained exemption from the payment of an assessment under this chapter for a particular year or a producer that is not exempt from the payment of an assessment under the terms of this chapter.
5. "Potato" means any variety of Irish potatoes harvested within this state.
6. "Producer" means a person that:
  - a. Plants or causes to be planted, on at least ten acres [4.05 hectares], a potato crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.

**4.1-10-02. Potato districts - Establishment.** The state consists of the following five potato districts:

1. Cavalier and Pembina Counties;
2. Walsh County in and west of range fifty-four;

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<sup>53</sup> Section 4.1-10-03 was also amended by section 19 of House Bill No. 1109, chapter 70; section 4.1-10-05 was also amended by section 20 of House Bill No. 1109, chapter 70; section 4.1-10-06 was also amended by section 21 of House Bill No. 1109, chapter 70, and section 25 of Senate Bill No. 2242, chapter 72.

3. Walsh County in and east of range fifty-three;
4. Benson, Grand Forks, and Nelson Counties; and
5. All remaining counties in the state.

**4.1-10-03. North Dakota potato council - Membership - Term.**

1. The North Dakota potato council is composed of:
  - a. One participating producer elected from each of the five districts established in section 4.1-10-02; and
  - b. The agriculture commissioner, who serves as the chairman.
2. Each member of the council must be a United States citizen.
3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on July first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term that member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

**4.1-10-04. Election of council members.**

1. Each year during the month of May, the commissioner shall identify the districts represented by council members whose terms are about to expire.
2.
  - a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.
  - b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by five other producers.
3. In order for a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner. That date may not be later than May thirty-first.

4. The commissioner shall prepare election ballots and mail the ballots to the participating producers in the district, together with a statement indicating:
  - a. The last date by which the ballots must be postmarked or filed with the council;
  - b. The date, time, and location at which the council will open and tabulate the ballots; and
  - c. That any participating producer may be present at the time the ballots are opened and tabulated.
5. The date selected for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
6. After the election, the council shall notify the governor that the election has taken place and shall provide to the governor the name and address of the newly elected council member.

**4.1-10-05. Meetings.** The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-10-06. Council members - Compensation.** Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**4.1-10-07. Council - Powers.**

1. The council may:
  - a. Expend moneys collected pursuant to this chapter for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
  - d. Contract with any person for any purpose permitted under this chapter;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer this chapter.
2. The council may not engage in a commercial business enterprise.

**4.1-10-08. Council - Duties.**

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include funding for research, education programs, transportation issues, and market development efforts, as well as participation in programs under the auspices of state, regional, national, and international promotion groups.
2. The council shall develop and disseminate information regarding the purpose of the potato assessment and ways in which the assessment benefits potato producers.

#### **4.1-10-09. Designated handler - Certification.**

1. Before a designated handler may sell, process, or ship potatoes, the designated handler shall obtain certification from the council. The certification is available upon submission to the council of an application containing the name under which the handler is transacting business within the state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
2.
  - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of its principal officers and agents within the state.
  - b. If the designated handler is a partnership, the application must include names and addresses of the persons constituting the partnership.
  - c. If the designated handler is a limited liability company, the application must include the names and addresses of its principal managers and agents within the state.
3. The designated handler shall notify the council whenever there is a change of information required by this section.

#### **4.1-10-10. Assessment.**

1. Except as otherwise provided, an assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all potatoes grown in this state or sold to a designated handler.
2. The council may increase the assessment by no more than one-half cent per hundredweight [45.36 kilograms] annually until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached.
3. This assessment is not imposed on any potatoes retained by producers for seed or for consumption by the producer, the producer's family, and nonpaying guests.

#### **4.1-10-11. Collection of assessment - Records.**

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the potatoes purchased by the designated handler.

2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw potatoes for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report stating the quantity of potatoes that the designated handler received, sold, or shipped.

**4.1-10-12. Submission of assessments - Civil penalty.**

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-10-13. Refund of assessment - Letters of request.**

1. To receive a refund of any assessments paid in accordance with this chapter, a producer shall:
  - a. Between January first and July fifteenth, submit a letter to the council indicating that the producer intends to request a refund of assessments paid on potatoes grown during that calendar year; and
  - b. Between June first and June fifteenth of the calendar year following the date of the letter required by subdivision a, submit a letter to the council requesting the refund of assessments paid by the producer on potatoes grown during the previous calendar year.
2. Upon verification that the requirements of this section have been met, the council shall provide the requested refund to the producer.
3. Notwithstanding subsections 1 and 2, a producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-10-14. Expenditures.** The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-10-15. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the potato fund. All moneys in the potato fund are appropriated on a continuing basis to the council for purposes of carrying out this chapter.

**4.1-10-16. Advisory referendum.**

1. a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by

- which the assessment imposed by this chapter should be raised or lowered.
- b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
  2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
  3. Each ballot must include a statement indicating:
    - a. The date on which the petition was filed and the number of signatures on the petition;
    - b. The date, time, and location at which the council will open and tabulate the ballots;
    - c. The last date by which the ballots must be postmarked or filed with the council; and
    - d. That any participating producer may be present at the time the ballots are opened and tabulated.
  4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
  5. If a majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly to amend this chapter.

**4.1-10-17. Penalty - Criminal.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>54</sup> **SECTION 11.** Chapter 4.1-11 of the North Dakota Century Code is created and enacted as follows:

**4.1-11-01. Definitions.** As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota soybean council.

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<sup>54</sup> Section 4.1-11-01 was also amended by section 22 of House Bill No. 1109, chapter 70; section 4.1-11-03 was also amended by section 23 of House Bill No. 1109, chapter 70; section 4.1-11-08 was also amended by section 24 of House Bill No. 1109, chapter 70, and section 26 of Senate Bill No. 2242, chapter 72.

3. "Designated handler" means any person that initially places soybeans into the channels of trade and commerce or any person that processes soybeans into food for human consumption.
4. a. "Producer" means any person that:
  - (1) Plants or causes to be planted a soybean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - (2) Will have met the requirements of paragraph 1 during the next available growing season; or
  - (3) Has met the requirements of paragraph 1 during the immediately preceding growing season.
- b. The term does not include an organic producer that has been exempted from the payment of assessments, in accordance with federal law.

**4.1-11-02. Soybean districts - Establishment.** The state consists of the following eight soybean districts:

1. Richland County;
2. Dickey, LaMoure, Ransom, and Sargent Counties;
3. Cass County;
4. Barnes, Griggs, and Steele Counties;
5. Traill County;
6. Grand Forks County;
7. Pembina, Nelson, and Walsh Counties; and
8. All other North Dakota counties in which soybeans are grown.

**4.1-11-03. North Dakota soybean council - Membership - Terms.**

1. The council consists of one producer elected from each of the eight districts established in section 4.1-11-02 and the commissioner.
2. Each member of the council, except the commissioner, must be a resident of and a producer in the district that the member represents.
3. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than three expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer to serve for the remainder of the term.

5. An elected member of the council may not serve more than two consecutive terms.
6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

#### **4.1-11-04. Election of county representative.**

1.
  - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of soybean producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
  - c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no soybean producers willing to serve as county representatives reside within the county.

#### **4.1-11-05. Election of council member - District representative.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-11-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting by registered mail at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-11-06. Election costs - Responsibility.** All costs of holding county and district elections are the responsibility of the council.

**4.1-11-07. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**4.1-11-08. Council members - Compensation.** Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**4.1-11-09. Council powers.** The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose permitted under this chapter;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

**4.1-11-10. Council duties.**

1. The council shall develop policies and initiate programs to promote the development of markets for and increase the utilization of soybeans grown in this state.
2. The council shall develop and disseminate information regarding the purpose of the soybean assessment and ways in which the assessment benefits soybean producers.
3. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of national soybean promotion organizations.

**4.1-11-11. Assessment.** An assessment equaling one-half of one percent of the value of the sale must be imposed upon all soybeans sold to a designated handler.

**4.1-11-12. Collection of assessment by designated handler - Records.**

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all soybeans subject to the assessment.
2. Each designated handler shall keep all records regarding the quantity of soybeans received and assessed for a period of three years.
3. All records required by this section may be examined by the council upon request.

**4.1-11-13. Quarterly report - Submission to council.** At the time and in the manner prescribed by the council, each designated handler shall file with the council a quarterly report stating the quantity of all soybeans that the handler purchased and assessed.

**4.1-11-14. Submission of assessments - Civil penalty.** Each designated handler shall forward to the council all assessments collected by the handler within thirty days after the end of each calendar quarter. If a designated handler fails to submit the assessments as required by this section, the council shall increase the amount owed by two percent each month, beginning with the day following that on which the assessments came due.

**4.1-11-15. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the soybean fund. All moneys in the soybean fund are appropriated on a continuing basis to the council to be used exclusively to carry out this chapter.

**4.1-11-16. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

**SECTION 12.** Chapter 4.1-12 of the North Dakota Century Code is created and enacted as follows:

**4.1-12-01. Definitions.**

1. "Commissioner" means the agriculture commissioner.
2. "Processor" means any person that purchases more than one thousand turkeys each year for slaughter.
3. "Producer" means any person that does business within this state and raises turkeys for slaughter each year.

**4.1-12-02. Assessment - Determination.**

1. The assessment required by this chapter is determined by:
  - a. Calculating the flock average live weight at the time of delivery to a processor; and
  - b. Calculating the actual number of turkeys in that flock after processing.
2. a. If the actual number of turkeys in a flock after processing had an average live weight of less than eighteen pounds, the assessment is equal to one cent per turkey.

- b. If the actual number of turkeys in a flock after processing had an average live weight of at least eighteen pounds but less than twenty-eight pounds, the assessment is equal to one and one-half cents per turkey.
- c. If the actual number of turkeys in a flock after processing had an average live weight of at least twenty-eight pounds, the assessment is equal to one and three-quarter cents per turkey.

**4.1-12-03. Assessment - Collection - Remittance by processor.** The processor shall collect the assessment required by this chapter at the time the turkeys are delivered to a processing plant, by deducting the amount required under section 4.1-12-02 from the price paid to the producer.

**4.1-12-04. Invoice - Contents - Preparation by processor.** At the time turkeys are delivered to a processor, the processor shall prepare and sign an invoice documenting:

1. The name and address of the producer;
2. The name and address of the seller, if the producer is not the seller;
3. The name and address of the processor;
4. The number of turkeys sold in that particular transaction;
5. The assessment collected on that particular transaction; and
6. The date.

**4.1-12-05. Submission of assessments - Civil penalty.**

1. A processor shall submit all assessments collected under this chapter to the commissioner within thirty days after the conclusion of each calendar quarter.
2. If a processor fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to five percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-12-06. Out-of-state processors.** The commissioner may contract with out-of-state processors for the collection and remittance of the assessment required by section 4.1-12-02.

**4.1-12-07. Refund of assessment - Form.** To receive a refund of any assessment paid in accordance with this chapter, a producer shall obtain an application form from the commissioner within sixty days from the date the producer's turkeys were delivered to a processor. The producer shall return the completed form to the commissioner within ninety days from the date the producer's turkeys were delivered to a processor. The producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

**4.1-12-08. Continuing appropriation.** The commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special

fund known as the turkey fund. All moneys in the turkey fund are appropriated on a continuing basis to the commissioner to carry out this chapter.

**4.1-12-09. Authorized expenditures.** The assessment required by this chapter may be used to fund research, education programs, and market development efforts, as well as participation in programs under the auspices of the national turkey federation.

**4.1-12-10. Powers of the commissioner.** The commissioner may:

1. Expend moneys raised under this chapter for the purposes set forth in section 4.1-12-09, provided the commissioner first consults with a committee appointed by the North Dakota turkey federation;
2. Require a processor to prepare and submit additional information and documents if necessary for the enforcement and administration of this chapter; and
3. Do all other things necessary and proper to enforce and administer this chapter.

**4.1-12-11. Biennial report - Information regarding turkey assessments.** When compiling the biennial report required by section 54-06-04, the commissioner shall provide information regarding activities under this chapter, including the amount of assessments collected and the manner in which the moneys were expended.

**4.1-12-12. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

<sup>55</sup> **SECTION 13.** Chapter 4.1-13 of the North Dakota Century Code is created and enacted as follows:

**4.1-13-01. Definitions.** As used in this chapter:

1. "Commercial channels" means the sale of wheat by a producer to any person who resells wheat or any product produced from wheat.
2. "Commission" means the North Dakota state wheat commission.
3. "Final settlement" means:
  - a. The date that wheat upon which a loan was obtained is:
    - (1) Sold to a person other than a governmental entity; or
    - (2) Assigned or transferred to a United States government agency; or

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<sup>55</sup> Section 4.1-13-12 was also amended by section 27 of Senate Bill No. 2242, chapter 72; section 4.1-13-15 was also amended by section 2 of House Bill No. 1402, chapter 84.

- b. The date upon which payment for the wheat is actually made if the wheat is sold in accordance with the terms of a deferred payment contract.
- 4. "First purchaser" means any person buying, accepting for sale, or otherwise acquiring, after harvest, the property in or to wheat, from the producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer if the actual or constructive possession of wheat is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
- 5. "Producer" means any person that:
  - a. Plants or causes to be planted a wheat crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.
- 6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person.
- 7. "Wheat" includes all classes of wheat.

**4.1-13-02. Wheat districts - Establishment.** The state consists of the following six wheat districts:

- 1. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties;
- 2. Burke, Divide, McKenzie, Mountrail, Renville, Ward, and Williams Counties;
- 3. Burleigh, Eddy, Emmons, Foster, Kidder, Logan, McIntosh, McLean, Sheridan, Stutsman, and Wells Counties;
- 4. Benson, Bottineau, McHenry, Pierce, Ramsey, Rolette, and Towner Counties;
- 5. Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill Counties; and
- 6. Cavalier, Grand Forks, Nelson, Pembina, and Walsh Counties.

**4.1-13-03. Wheat commission - Membership - Eligibility.**

- 1. The wheat commission consists of:
  - a. One individual elected from each of the six districts established in section 4.1-13-02; and
  - b. One individual appointed to represent the state at large.

2. Each elected member of the wheat commission must be a resident of the district that the member represents, a qualified elector, and a producer.
3. The member at large must be a resident of this state, a qualified elector, and a producer.
4. Any individual who requested a refund under section 4.1-13-18 during the twelve months preceding the date on which the term being sought would begin is not eligible to serve as a member of the commission.

#### **4.1-13-04. Terms of office.**

1. The term of each commission member is four years.
2. The term of an elected member begins on July first following the date of the member's election and continues until the member's successor has been elected and qualified. The term of the member at large begins on July first of the year in which the member is appointed and continues until the member's successor has been appointed.
3. The terms must be staggered so that no more than two expire each year.
4. An individual may not serve more than three terms as a commission member.
5. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

#### **4.1-13-05. Election of county representative.**

1. No later than May first of the year in which the term of an elected commission member is to expire, the extension agent for each county in that member's district shall hold a meeting of producers for the purpose of electing a county representative.
2. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
3. The meeting must be held within the county.
4. During the meeting, the county extension agent shall conduct the election.
5. Any participating producer who resides in the county may vote in the election.
6. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the commission that the election has taken place, and provide to the director and the commission the name and address of the newly elected county representative.

7. Only those individuals who would be qualified to serve as elected commission members may be elected as county representatives after July 31, 2009.
8. If an individual is unable or unwilling to continue serving as a county representative, the county extension agent may appoint another qualified producer to serve in that capacity, until the next county representative is elected in accordance with this section.

**4.1-13-06. Election of district representative - Commission member.**

1. Upon receiving the notice required by subsection 6 of section 4.1-13-05, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the commission member from that district.
5. The director shall notify the governor and the commission that the election has taken place and shall provide to the governor and the commission the name and address of the newly elected commission member.

**4.1-13-07. County representative - Additional duties - Reimbursement of expenses.** In addition to any other duties established in section 4.1-13-06, the commission may require county representatives to attend meetings for the purpose of promoting commission programs and to perform other duties as directed by the commission. The commission shall reimburse the expenses of county representatives who perform such additional duties in the same manner as that provided by law for state officials.

**4.1-13-08. Election costs - Responsibility.** All costs of holding county and district meetings and elections are the responsibility of the commission.

**4.1-13-09. Member at large - Nominating commission - Appointment by governor.**

1. No sooner than sixty days before the term of the commission's member at large is to expire, the agriculture commissioner, serving as the chairman, shall convene a nominating committee consisting of the following individuals:
  - a. The agriculture commissioner;
  - b. The director of the North Dakota agricultural experiment station;
  - c. The president of the North Dakota crop improvement association;
  - d. The president of the North Dakota farm bureau;

- e. The president of the North Dakota farmers union;
  - f. The president of the North Dakota grain dealers association;
  - g. The president of the North Dakota grain growers association;
  - h. The director of the North Dakota state university extension service;  
and
  - i. A resident of this state who is a member of, and selected by, the United States durum growers association.
2. The committee shall submit to the governor the names of three individuals who are qualified to serve as a member at large.
  3. Before the member's term is to expire, the governor shall appoint one of the three individuals to serve as the member at large.
  4. Any member of the nominating committee may appoint a designee to carry out the requirements of this section.

#### **4.1-13-10. Commission vacancies.**

1. The commission shall declare a member to be ineligible and the member's position vacant if the commission determines that the member no longer meets the qualifications set forth in section 4.1-13-03.
2. The commission may declare a member to be ineligible and the member's position vacant if the commission determines that the member has failed to attend two consecutive commission meetings.
3. If an elected commission member is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was elected, the commission shall direct the county representatives to hold an election for the purpose of filling the vacancy. The election must be conducted in the same manner as that provided for under section 4.1-13-06.
4. If the commission member serving at large is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was appointed, the commission shall direct the nominating committee to submit the names of three eligible individuals to the governor for the purpose of filling the vacancy. The appointment must be conducted in the same manner as that provided for under section 4.1-13-09.

#### **4.1-13-11. Election of chairman - Meetings.**

1. Annually, the commission shall elect one member to serve as the chairman and another to serve as the vice chairman.
2. The chairman shall call all meetings of the commission and shall call a special meeting of the commission within seven days when petitioned to do so by three commission members.

3. The commission shall meet at least once every calendar quarter.

**4.1-13-12. Commission members - Compensation.** Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission.

**4.1-13-13. Commission - Powers.**

1. The commission may:
  - a. Expend moneys collected pursuant to this chapter for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
  - d. Contract with any person for any purpose permitted under this chapter;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer this chapter.
2. The commission may not engage in a commercial business enterprise.

**4.1-13-14. Commission - Duties.**

1. The commission shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in efforts under the auspices of other state, regional, national, and international organizations.
2. The commission shall develop and disseminate information regarding the purpose of the wheat assessment and ways in which the assessment benefits wheat producers.

**4.1-13-15. Assessment.** An assessment at the rate of twelve mills per bushel [35.24 liters] by weight is imposed upon:

1. All wheat grown in this state, at the time of its sale;
2. All wheat delivered into this state, at the time of its sale; and
3. All wheat sold through commercial channels to a first purchaser in this state.

**4.1-13-16. Collection of assessment - Records.**

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the wheat being

purchased. If the wheat is subject to a lien, pledge, or mortgage, the assessment must:

- a. Be deducted from the proceeds of the loan; or
  - b. The claim must be secured and must be subject to adjustment at the time of settlement if the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
2. At the time of the sale, the first purchaser shall provide a record of the transaction to the seller in the manner prescribed by the commission.

**4.1-13-17. Submission of assessments.** No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall:

1. Complete and file with the commission a form prescribed by the commission; and
2. Forward to the commission all assessments collected by the first purchaser.

**4.1-13-18. Refund of assessment - Form - Exception.**

1. a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the assessment or final settlement.
  - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment collected within ninety days after the date of the assessment or final settlement. The commission then shall refund the net amount of the assessment that had been collected.
  - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.
2. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.
3. Notwithstanding subsection 1, a member of the wheat commission is not eligible to receive a refund under this section.

**4.1-13-19. Reimbursement for double payments.** Notwithstanding section 4.1-13-18, if a producer documents to the commission that the producer has paid the assessment more than once on the same wheat, the commission shall reimburse the producer for the double payment.

**4.1-13-20. Expenditure of funds.** The commission shall approve all expenditures made pursuant to this chapter. All expenditures must be recorded on vouchers approved by the commission.

**4.1-13-21. Continuing appropriation.** The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the state

wheat commission fund. All moneys in the state wheat commission fund are appropriated on a continuing basis to the commission to carry out this chapter.

**4.1-13-22. Commission - Report to legislative assembly.** At the time the commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentation.

**4.1-13-23. Contract with trade associations.** The commission shall expend an amount at least equal to that raised by two mills of the assessment provided for in section 4.1-13-15 to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

**4.1-13-24. Contract with trade associations - Report to legislative assembly.** At the time the commission presents the report required by section 4-24-10, each trade association with which the commission has contracted under section 4.1-13-23 shall present a report detailing all activities in which the trade association engaged under the contract.

**4.1-13-25. Legal counsel - Provision by attorney general.** The attorney general shall provide legal counsel to the commission or designate an assistant for that purpose.

**4.1-13-26. Penalty.** Any person willfully violating this chapter is guilty of a class B misdemeanor.

**SECTION 14. AMENDMENT.** Section 36-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**36-04-10. Refusal or revocation of license.** The department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to

- have access to inspect and to copy any and all of such records relating to the dealer's business;
5. The applicant has failed or refused to furnish the information required under this chapter and as prescribed by the department;
  6. The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
  7. The applicant or licensee has failed to pay brand inspection fees or veterinarian fees as required by law;
  8. The applicant or licensee has failed to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
  9. The applicant or licensee has failed to pay for livestock purchased. Such failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**SECTION 15. AMENDMENT.** Section 36-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-04-10.1. Unlawful acts.** It is a violation of this chapter for any applicant or licensee to:

1. Violate any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
3. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
4. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
5. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
6. Fail to pay brand inspection fees or veterinarian fees as required by law;
7. Fail to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
8. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**SECTION 16. AMENDMENT.** Section 36-05-13.2 of the North Dakota Century Code is amended and reenacted as follows:

**36-05-13.2. Unlawful acts.** It is a violation of this chapter for any auction market or person to:

1. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-05-09.1;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
7. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

<sup>56</sup> **SECTION 17. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, ~~4-27-04~~ 4.1-05-02, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk marketing board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.

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<sup>56</sup> Section 54-07-01.2 was also amended by section 5 of House Bill No. 1042, chapter 65.

- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The state game and fish advisory board.
- m. The health council.
- n. The air pollution control advisory council.
- o. The board of animal health.
- p. The administrative committee on veterans' affairs.
- q. The committee on aging.
- r. The committee on employment of people with disabilities.
- s. The commission on the status of women.
- t. The North Dakota council on the arts.
- u. The state historical board.
- v. The Yellowstone-Missouri Rivers confluence commission.
- w. The state water commission.
- x. The state water pollution control board.

**SECTION 18. REPEAL.** Chapters 4-10.1, 4-10.2, 4-10.3, 4-10.4, 4-10.5, 4-10.6, 4-10.7, 4-12.1, 4-13.1, 4-27, 4-28, and 4-34 of the North Dakota Century Code are repealed.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 81****SENATE BILL NO. 2203**

(Senators Wanzek, Klein, Taylor)

(Representatives D. Johnson, Mueller, Nelson)

AN ACT to amend and reenact section 4-10.4-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-02-12 of the North Dakota Century Code, relating to the barley assessment.

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

**SECTION 1. AMENDMENT.** Section 4-10.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-08. Tax levied.**

1. A tax at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.
2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the thirtieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it. The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall remit the tax to the council on all barley sold by the grower outside the state.

<sup>57</sup> **SECTION 2. AMENDMENT.** Section 4.1-02-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-02-12. Assessment.** An assessment at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state. The assessment does not apply to barley grown by a producer and used by the producer as livestock feed.

Approved April 8, 2009

Filed April 9, 2009

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<sup>57</sup> Section 4.1-02-12 was created by section 2 of House Bill No. 1025, chapter 80.

**CHAPTER 82****HOUSE BILL NO. 1413**

(Representatives Mueller, Hofstad, D. Johnson)  
(Senators Flakoll, Klein, Taylor)

AN ACT to create and enact a new section to chapter 4-10.6 of the North Dakota Century Code or in the alternative to create and enact section 4.1-04-04.1 of the North Dakota Century Code, relating to corn utilization council elections; and to amend and reenact sections 4-10.6-02 and 4-10.6-08 of the North Dakota Century Code or in the alternative to amend and reenact sections 4.1-04-04 and 4.1-04-10 of the North Dakota Century Code, relating to corn assessments.

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

**SECTION 1. AMENDMENT.** Section 4-10.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.6-02. North Dakota corn utilization council - Members - Election - Term.**

1. The North Dakota corn utilization council must be composed of one member elected from each district established by section 4-10.6-03. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office.
2. ~~The council shall administer conduct all elections and may request the assistance of the commissioner. Elections must be conducted no later than April first of each year. Before the expiration of a member's term, the council shall appoint a nominating committee made up of participating growers who reside in the member's district. The committee shall nominate a resident participating grower as a candidate for the office. Additional candidates may be nominated by a written petition of five growers from the district as follows:~~
  - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of corn producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks.

The last notice must be published no fewer than five nor more than ten days before the meeting.

- c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any producer who resides in the county and who did not request a refund during the preceding year may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
3. Subsection 2 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no corn producers willing to serve as county representatives reside within the county.
  4. No council member may serve more than two consecutive four-year terms.
  5. When a member's office is vacant, the council; ~~before beginning the nominating process;~~ shall notify growers of the vacancy and pending election by letter or by publishing a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

**SECTION 2.** A new section to chapter 4-10.6 of the North Dakota Century Code is created and enacted as follows:

**Election of district representative - Council member.**

1. Upon receiving the notice required by subdivision f of subsection 2 of section 4-10.6-02, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**SECTION 3. AMENDMENT.** Section 4-10.6-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.6-08. Assessment.** ~~Effective July 1, 1994 Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn marketed purchased by the first designated handler in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.~~

<sup>58</sup> **SECTION 4. AMENDMENT.** Section 4.1-04-04 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-04-04. Election of council member county representative.**

1. a. No later than ~~January~~ March first of the year in which the term of a council member is to expire, the council shall appoint an nominating committee consisting of at least two producers who reside in the council member's district and who have not requested a refund under section 4.1-04-13 during the preceding year.
2. No later than February first, the committee shall nominate a qualified producer as a candidate for council membership.
3. Other qualified producers may become candidates for council membership by submitting to the council, no later than March first, a petition signed by at least five producers who reside in the district to be represented.
4. a. If a qualified producer submits a petition in accordance with subsection 3, the council shall:
  - (1) Determine the date, time, and place for the election;
  - (2) Publish that information in the official newspaper of each county in the district for two consecutive weeks;
  - (3) Prepare the ballots; and
  - (4) Conduct the election.
- b. If a qualified producer does not submit a petition in accordance with subsection 3, and the only candidate for council membership is the individual recommended by the nominating committee, the council shall waive the election requirements and declare that the individual recommended by the nominating committee is the new council member.
5. Any producer who resides in the district and who did not request a refund under section 4.1-04-13 during the preceding year may vote in the election.

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<sup>58</sup> Section 4.1-04-04 was created by section 4 of House Bill No. 1025, chapter 80.

6. The council shall provide to the governor the name and address of the new council member extension agent for each county in that member's district shall hold a meeting of corn producers for the purpose of electing a county representative.
  - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
  - c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any producer who resides in the county and who did not request a refund during the preceding year may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no corn producers willing to serve as county representatives reside within the county.

**SECTION 5.** Section 4.1-04-04.1 of the North Dakota Century Code is created and enacted as follows:

**4.1-04-04.1. Election of district representative - Council members.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-04-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

<sup>59</sup> **SECTION 6. AMENDMENT.** Section 4.1-04-10 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-04-10. Assessment.** Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be imposed upon all corn ~~grown and sold~~ purchased by the first designated handler in this state.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>59</sup> Section 4.1-04-10 was created by section 4 of House Bill No. 1025, chapter 80.

## CHAPTER 83

### SENATE BILL NO. 2208

(Senators Klein, Dotzenrod, Wanzek)  
(Representatives Brandenburg, D. Johnson, Mueller)

AN ACT to amend and reenact section 4-10.2-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-09-16 of the North Dakota Century Code, relating to oilseed assessments; to provide an effective date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-10.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.2-08. Assessments levied - Continuing appropriation.** An assessment at the rate of ~~three~~ four cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower; ~~and rapeseed or canola grown in this state or sold to a first purchaser. An assessment at the rate of three cents per hundredweight [45.36 kilograms] must be levied and imposed upon all safflower, rapeseed or canola,~~ and crambe grown in the state or sold to a first purchaser; ~~and an~~ An assessment at the rate of ~~two~~ three cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

The first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the first purchaser.

Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report.

All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account or accounts designated as the oilseed fund. All money in the oilseed fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

<sup>60</sup> **SECTION 2. AMENDMENT.** Section 4.1-09-16 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-09-16. Assessment.**

1. An assessment at the rate of ~~three~~ four cents per hundredweight [45.36 kilograms] is imposed upon all ~~oilseeds, other than flax,~~ sunflowers and canola grown in this state or sold to a first purchaser.
2. An assessment at the rate of ~~two~~ three cents per bushel [35.24 liters] is imposed upon all flax grown in this state or sold to a first purchaser.
3. An assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all other oilseeds grown in this state or sold to a first purchaser.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

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

Approved April 28, 2009  
Filed May 1, 2009

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<sup>60</sup> Section 4.1-09-16 was created by section 9 of House Bill No. 1025, chapter 80.

**CHAPTER 84****HOUSE BILL NO. 1402**

(Representatives D. Johnson, Brandenburg, Hofstad, Mueller)  
(Senators Taylor, Wanzek)

AN ACT to amend and reenact section 4-28-07.1 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-13-15 of the North Dakota Century Code, relating to the wheat assessment; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** If House Bill No. 1025 does not become effective, section 4-28-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-28-07.1. (Effective after June 30, 2009) Wheat tax levy.**

1. a. A tax of ~~twelve~~ fifteen mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
- b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided for in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
- b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
- c. If no request for refund has been made within the period prescribed in this subsection, the producer is presumed to have agreed to the deduction. A producer that, for any reason, has paid the tax more than once on the same wheat, upon furnishing proof of that payment to the commission, is entitled to a refund of the overpayment.

3. To inform the producer, the commission shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with state and federal agencies and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from the money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
6. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

<sup>61</sup> **SECTION 2. AMENDMENT.** Section 4.1-13-15 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**4.1-13-15. Assessment.** An assessment at the rate of ~~twelve~~ fifteen mills per bushel [35.24 liters] by weight is imposed upon:

1. All wheat grown in this state, at the time of its sale;
2. All wheat delivered into this state, at the time of its sale; and
3. All wheat sold through commercial channels to a first purchaser in this state.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

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<sup>61</sup> Section 4.1-13-15 was created by section 13 of House Bill No. 1025, chapter 80.

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

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 85****HOUSE BILL NO. 1270**

(Representatives Mueller, Boe, D. Johnson, Wall)  
(Senators Dotzenrod, Wanzek)

AN ACT to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the certification of forage; to repeal section 63-01.1-12.2 of the North Dakota Century Code, relating to weed-free certification; to provide an appropriation; and to declare an emergency.

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

**SECTION 1.** A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

**Certification of forage - Compliance with other standards.**

1. To obtain certification that weeds prohibited according to the standards of the North American weed management association are not cut when producing viable seeds and included in baled forage, the owner of the forage shall request that the agriculture commissioner conduct a certification inspection.
2. Upon receiving the request, the agriculture commissioner shall:
  - a. Inspect the forage acreage within ten days before harvest to verify that weeds prohibited according to the standards of the North American weed management association are not present and producing viable seeds; and
  - b. (1) Ascertain that the scheduled harvest has occurred;
  - (2) Determine the number of bales for which certification tags must be issued; and
  - (3) Verify that the baled forage is stored or will be stored only in an area where weeds prohibited according to the standards of the North American weed management association are not present and producing viable seeds.
3. If the agriculture commissioner determines that the conditions of subsection 2 have been met, the commissioner shall issue and affix or cause to be affixed on each bale of forage one dated certification tag.

**Agents of the commissioner - Designation - Training.** The agriculture commissioner may designate individuals to serve as agents of the commissioner for the purpose of conducting the inspections permitted by this Act. To be designated as an agent, an individual must:

1. Be a weed control officer;
2. Be a member of a county or a city weed board;

3. Be determined by the commissioner to have a level of education and experience sufficient to accurately perform the requested certifications; or
4. At least once every thirty-six months, successfully complete a training program conducted by the commissioner.

**Reciprocal recognition of certification.** The agriculture commissioner may contract with any governmental entity that is responsible for the certification of forage in another state or province and provide for the reciprocal recognition of such certifications.

**Fees - Continuing appropriation.** The agriculture commissioner may set and charge fees for certifying forage in accordance with this chapter. The commissioner shall deposit moneys collected under this chapter in the environment and rangeland protection fund.

**SECTION 2. REPEAL.** Section 63-01.1-12.2 of the North Dakota Century Code is repealed.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 86****HOUSE BILL NO. 1026**

(Legislative Council)  
(Agriculture Committee)

AN ACT to provide for the control of noxious weeds; to amend sections 4-33-11 and 57-15-06.10 of the North Dakota Century Code, relating to pest control and consolidated levies; to repeal chapter 63-01.1 of the North Dakota Century Code, relating to noxious weed control and pest control; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

**4-33-11. Authority for financing local control programs - County pest coordinator.**

1. The governing body of any political subdivision may appropriate money for the control of pests under this chapter ~~or chapter 63-01.1~~. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs ~~that should~~ to be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.
2. The board of county commissioners for any county shall designate a ~~person~~ an individual to serve as county pest coordinator. The county weed control officer may serve in that capacity if approved by the board of county commissioners. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

**SECTION 2. Definitions.** As used in sections 2 through 33 of this Act:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.

2. "City weed control officer" means an individual designated by a city weed board to be responsible for the operation and enforcement of sections 2 through 33 of this Act within the city.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Control" means to prevent a noxious weed from spreading by:
  - a. Suppressing its seeds or propagating parts; or
  - b. Destroying either the entire plant or its propagating parts.
5. "County weed control officer" means an individual designated by the county weed board to be responsible for the operation and enforcement of sections 2 through 33 of this Act within each county.
6. "Noxious weed" means a plant propagated by either seed or vegetative parts and determined to be injurious to public health, crops, livestock, land, or other property by:
  - a. The commissioner in accordance with section 6 of this Act;
  - b. A county weed board in accordance with section 11 of this Act; or
  - c. A city weed board in accordance with section 22 of this Act.
7. "Township road" means an improved public road that is:
  - a. Located outside of an incorporated city;
  - b. Not designated as part of a county, state, or federal-aid road system; and
  - c. Constructed, maintained, graded, and drained by the township, or by the county if the township is unorganized.

**SECTION 3. Control of noxious weeds - Responsibility.** Each person shall do all things necessary and proper to control the spread of noxious weeds.

**SECTION 4. Noxious weed control - Agriculture commissioner - Powers.** The commissioner may enter upon any land in the state to perform duties and to exercise powers under sections 2 through 33 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

**SECTION 5. Noxious weed control - Agriculture commissioner - Duties.** The commissioner shall:

1. Maintain a state noxious weed list;
2. Direct the removal of a noxious weed from a county or city noxious weed list if the commissioner, after consultation with the respective weed board and the North Dakota state university extension service,

determines there is insufficient justification for the continued inclusion of that particular noxious weed;

3. Except as otherwise provided, forward all signed complaints to the proper weed control authority; and
4. Call an annual meeting of all weed control officers to review noxious weed control efforts in this state.

#### **SECTION 6. State noxious weed list - Compilation.**

1. Before the commissioner may add a weed to or remove a weed from the state noxious weed list, the commissioner shall consult with the North Dakota state university extension service.
2. Before January 1, 2010, and at least every five years thereafter, the commissioner shall review the state noxious weed list. The commissioner shall provide each county and city weed board with at least fourteen days' notice of the time and place at which the list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide each county and city weed board with written notice of any changes to the state noxious weed list.

#### **SECTION 7. County weed board - Members - Terms - Compensation.**

1. Each board of county commissioners shall:
  - a. Establish contiguous county weed board member areas; or
  - b. Determine that county weed board members must be appointed at large.
2. The board of county commissioners shall appoint a county weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. If the board of county commissioners has established county weed board member areas as provided for in subsection 1, any qualified elector residing in the county weed board member area is eligible to represent that area on the board. If the board of county commissioners has determined that county weed board members must be appointed at large as provided for in subsection 1, any qualified elector residing in the county is eligible to serve on the county weed board.
4. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
5. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.

6.
  - a. The county weed board shall elect a chairman and a vice chairman from among its members.
  - b. The county weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
7. The board of county commissioners shall establish the rate of compensation for county weed board members.

**SECTION 8. County weed board - Jurisdiction.** The jurisdiction of a county weed board extends to all land within the county but does not include any land within the corporate limits of a city if that city has its own noxious weed control program under sections 2 through 33 of this Act.

**SECTION 9. County weed board - Powers.** A county weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

**SECTION 10. County weed board - Duties.** Each county weed board shall:

1. Implement a program for the control of noxious weeds;
2. Provide for the control of noxious weeds along county and township roads and along county highways;
3. Establish the time and place of regular board meetings;
4. Meet at least once each year;
5. Keep minutes of its board meetings and a complete record of all official acts;
6. Control and disburse all moneys received by the county from any source for noxious weed control;
7.
  - a. Provide for the compensation of its members and its secretary and treasurer;
  - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees; and
8.
  - a. Employ and provide for the compensation of a weed control officer;
  - b. Reimburse the weed control officer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees.

**SECTION 11. County weed board - Development of county weed list.**

1. A county weed board may designate as noxious certain weeds that are not on the state noxious weed list, provided the county weed board consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each county weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The county weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide the commissioner with written notice of any changes to the county list.
3. A county weed board shall immediately remove any noxious weed from its list when directed to do so by the commissioner in accordance with section 5 of this Act.

**SECTION 12. County weed control officer - Membership on county weed board - Employment.**

1. A county weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

**SECTION 13. County weed control officer - Powers.** A county weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 2 through 31 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

**SECTION 14. County weed control officer - Duties.** The county weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the county;
2. Become acquainted with the location of noxious weeds within the county;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the county;
5. Investigate all signed complaints received by the officer regarding noxious weeds;
6. Post or publish in the official newspaper of the county any notices the commissioner deems necessary to further noxious weed control under sections 2 through 33 of this Act;

7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under sections 2 through 33 of this Act.

**SECTION 15. County noxious weed control program - Payment of expenses - Mill levy authorization.**

1. The board of county commissioners may pay the expenses of a county noxious weed control program authorized under sections 2 through 33 of this Act from the county general fund, the noxious weed control fund, or both.
2.
  - a. The county weed board may annually certify to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all property in the county, other than that which lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
  - b. In addition to the levy authorized in subdivision a, the board of county commissioners may levy an amount not to exceed two mills per dollar on the taxable valuation of all property in the county, other than that which lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
  - c. The board of county commissioners shall levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the noxious weed control fund, which is used to pay the expenses of a county noxious weed control program.
  - d. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
3. For purposes of this section, the expenses of a county noxious weed control program include compensation for and the reimbursement of expenses incurred by the county weed board, the county weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by sections 2 through 33 of this Act.

**SECTION 16. State appropriations for noxious weed control - County share - Determination.**

1. The commissioner shall consult with the county weed boards and develop a method for the distribution to county weed boards of all moneys appropriated by the state for noxious weed control, other than the landowner assistance grants provided for in section 17 of this Act.
2. The method must:
  - a. Limit the amount that any county weed board is entitled to receive under this section to fifty percent of the board's actual expenditures under this section; and

- b. Allow the commissioner to waive the limit provided for in this subsection if the commissioner determines that a noxious weed is seriously endangering areas of the county or the state.

**SECTION 17. State appropriations for noxious weed control - Landowner assistance program.**

1. The commissioner shall consult with representatives of county and city weed boards and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2. a. The formula must require that county officials budget, from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control; provided, however, that this amount does not apply to property that lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
  - b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.
3. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner. The formula may include payment-in-kind criteria by which the landowner's contribution may be realized.

**SECTION 18. Control of noxious weeds within cities.** The governing body of any city having a population of three thousand or more may establish a program for the control of noxious weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.

**SECTION 19. City weed board members - Terms - Compensation.**

1. If the governing body of a city elects to establish a noxious weed control program, as authorized by section 18 of this Act, the governing body shall appoint a weed board consisting of three, five, or seven members.
2. The term of office for a board member is four years or until a successor is appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. Any qualified elector residing within the city is eligible to serve on the board.
4. A board member shall assume office at the first regular meeting of the city weed board following the member's appointment.
5. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.

6. The city weed board shall elect a chairman and a vice chairman from among its members.
7. The city weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
8. The governing body of the city shall establish the rate of compensation for city weed board members.

**SECTION 20. City weed board - Powers.** A city weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that undertaking control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

**SECTION 21. City weed board - Duties.** Each city weed board shall:

1. Implement a program for the control of noxious weeds;
2. Establish the time and place of regular board meetings;
3. Meet at least once each year;
4. Keep minutes of its meetings and a complete record of all official acts;
5. Control and disburse all moneys received by the city from any source for noxious weed control;
6.
  - a. Provide for the compensation of its members and its secretary and treasurer;
  - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees; and
7.
  - a. Employ and provide for the compensation of a weed control officer;
  - b. Reimburse the weed control officer for actual and necessary expenses; and
  - c. Provide a mileage allowance at the same rate as that established for state employees.

**SECTION 22. City weed board - Development of city weed list - Review - Removal.**

1. A city weed board may designate as noxious certain weeds that are not on the state or county noxious weed list, provided the city weed board first consults with the North Dakota state university extension service and that the designation is approved by the commissioner.

2. Before January 1, 2010, and at least every five years thereafter, each city weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The city weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, within fourteen days of the review, shall provide the commissioner with written notice of any changes to the city list.
3. A city weed board immediately shall remove any noxious weed from the board's list when directed to do so by the commissioner in accordance with section 5 of this Act.

**SECTION 23. City weed control officer - Membership on city weed board - Employment.**

1. A city weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

**SECTION 24. City weed control officer - Powers.** A city weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 2 through 33 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

**SECTION 25. City weed control officer - Duties.** The city weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of sections 2 through 33 of this Act within the city;
2. Become acquainted with the location of noxious weeds within the city;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the city;
5. Investigate all signed complaints received by the officer regarding noxious weeds within the city;
6. Post or publish in the official newspaper of the city any notices the commissioner deems necessary to further noxious weed control under sections 2 through 33 of this Act;
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under sections 2 through 33 of this Act.

**SECTION 26. City noxious weed control program - Payment of expenses - Mill levy authorization.**

1. The governing body of a city may pay the expenses of a city noxious weed control program authorized under sections 2 through 33 of this Act from the city general fund, the noxious weed control fund, or both.
2.
  - a. The city weed board may annually certify to the governing body of a city a tax, not to exceed two mills on the taxable valuation of all property in the city.
  - b. In addition to the levy authorized in subdivision a, the governing body of a city may levy an amount not to exceed two mills per dollar on the taxable valuation of all property in the city.
  - c. The governing body of a city shall levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the noxious weed control fund, which is used to pay the expenses of a city noxious weed control program.
  - d. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
3. For purposes of this section, the expenses of a city noxious weed control program include compensation for and the reimbursement of expenses incurred by the city weed board, the city weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by sections 2 through 33 of this Act.

**SECTION 27. Publicly owned land - Noxious weed control.** Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds, within thirty days after the agency receives the bill.

**SECTION 28. Noxious weed control - Enforcement responsibilities of other agencies.** Law enforcement agents shall cooperate with the commissioner, a weed control board, and a weed control officer for the purpose of enforcing sections 2 through 33 of this Act.

**SECTION 29. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.**

1.
  - a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.
  - b. The notice must:
    - (1) Specify the minimal remedial requirements;



- (2) Specify the time within which the landowner must meet the minimum remedial requirements;
  - (3) Specify that the landowner may be subject to penalties provided under sections 2 through 33 of this Act if the landowner fails to comply with the remedial requirement;
  - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
  - (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.
- c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.
  - d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
  - e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.
  - f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

### **SECTION 30. Quarantine - Declaration - Hearing - Penalty.**

1. If the commissioner determines that a quarantine of this state or any portion thereof may be necessary to prevent the spread of noxious weeds, the commissioner shall schedule a public hearing on the matter and provide notice of the hearing by publishing its time, place, and date in the official newspaper of each county having land within the area of the proposed quarantine. If after the hearing the commissioner orders the imposition of a quarantine, the order must include the date by which or the circumstances under which the commissioner shall lift the quarantine order.

2. If the commissioner determines that the imposition of an emergency quarantine is necessary to prevent the spread of noxious weeds, the commissioner may impose such an order for a period not to exceed fourteen days. Within the fourteen-day period, the commissioner shall hold a public hearing as provided for in subsection 1 and determine whether a quarantine order under subsection 1 should be imposed.
3. Following the establishment of a quarantine, the movement of any product or material described in the quarantine order is subject to the order.
4. Any person who violates a quarantine order issued under this section is guilty of a class B misdemeanor.

**SECTION 31. Preventing the dissemination of noxious weeds - Penalty.**

1.
  - a. A person may not willfully transport any material that contains noxious weed seeds or propagating parts, on a public road, in a manner that allows for the dissemination of noxious weeds.
  - b. A person may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds.
  - c. A person may not willfully dispose of any material that contains noxious weed seeds or propagating parts in a manner that allows for the dissemination of noxious weeds.
2. Any person who violates this section is guilty of a class B misdemeanor.

**SECTION 32. Civil penalty.**

1.
  - a. In addition to any other penalties provided for in sections 2 through 33 of this Act, a person who violates sections 2 through 33 of this Act or any rules adopted under this chapter is subject to a civil penalty in an amount not to exceed eighty dollars per day for each day of violation, subject to a maximum penalty of four thousand dollars per year.
  - b. Penalties imposed upon a landowner for failing to comply with the remedial requirements, as set forth in section 29 of this Act, are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 29 of this Act.
2. All penalties collected under this section must be credited to the noxious weed control fund of:
  - a. The city in which the violation occurred if the city has a noxious weed control program under sections 2 through 33 of this Act; or
  - b. The county in which the violation occurred.
3. Any penalties provided for under this section may be adjudicated by a court, a county weed board, or a city weed board after a hearing.

4. An aggrieved person may appeal the imposition of a penalty by a county weed board to the board of county commissioners. An aggrieved person may appeal the imposition of a penalty by a city weed board to the governing body of the city.

### **SECTION 33. Action on complaint - Request for hearing.**

1.
  - a. If an individual filed a signed complaint with a county weed board or the county weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the board of county commissioners.
  - b. Upon receiving a request for a hearing, the board of county commissioners shall schedule a public hearing within twenty-one days and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
  - c. Within fourteen days after the hearing, the board of county commissioners shall issue a determination regarding the matter and shall issue appropriate directives to the county weed board.
  - d. A decision by the board of county commissioners under this section is final.
2.
  - a. If an individual filed a signed complaint with a city weed board or the city weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the governing body of the city.
  - b. Upon receiving a request for a hearing, the governing body of the city shall schedule a public hearing and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
  - c. Within fourteen days after the hearing, the governing body of the city shall issue a determination regarding the matter and shall issue appropriate directives to the city weed board.
  - d. A decision by the governing body of the city under this section is final.

**SECTION 34. AMENDMENT.** Section 57-15-06.10 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-15-06.10. Optional consolidation of county mill levies.**

1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or 57-15-06, a county may determine its general fund levy authority as provided in this section. A county may consolidate the levies provided for under sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02, 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, 11-11.1-06, 11-28-06, 18-07-01, 24-05-01, 32-12.1-08, 40-38-02, 40-57.2-04, 49-17.2-21, 52-09-08,

57-15-06.4, 57-15-06.5, 57-15-06.6, 57-15-06.9, 57-15-10.1, 57-15-27.2, 57-15-54, 57-15-59, 57-47-04, and 61-04.1-26, and ~~63-04.1-06~~ section 15 of this Act, with its general fund levy under section 57-15-06 to provide for a county general fund levy which may not exceed one hundred thirty-four mills on the dollar of taxable valuation of the county. A county that elects to determine its general fund levy authority under this section may not impose separate levies under the sections listed in this subsection and may not increase the number of mills levied in any one year over the number levied in the previous year by more than the increase in the consumer price index for all urban consumers, all items, United States city average, as completed by the United States department of labor, bureau of labor statistics.

2. The consolidation of mill levies under subsection 1 may be accomplished by resolution of the board of county commissioners, subject to the right of referendum by the county electors. The board of county commissioners may by majority vote adopt a preliminary resolution providing for the consolidated levy. The board shall publish the preliminary resolution in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold at least one public hearing and receive comments regarding the consolidation of mill levies. The preliminary resolution may be referred to the qualified electors of the county by a petition protesting the consolidation. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor before four p.m. on the ninetieth day after the preliminary resolution is adopted. If the petition contains the signatures of a sufficient number of qualified electors, the board of county commissioners shall rescind the preliminary resolution or submit the resolution to a vote of the qualified electors of the county at the next regular election or at a special election called by the board of county commissioners to address the question. If a majority of the qualified electors voting on the question approve the resolution, the consolidation becomes effective for the next tax year and subsequent tax years. If a petition protesting the consolidation is not submitted within ninety days, the board of county commissioners shall consider the comments received regarding the consolidation and either adopt a final resolution implementing the consolidation or rescind the preliminary resolution. The consolidation of mill levies may be reversed by resolution of the board of county commissioners following the same procedure provided for implementation of the consolidation or by a majority vote of the qualified electors of the county voting on the question pursuant to submission of a petition to reverse the consolidation signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election.
3. A contractual obligation entered by a county with respect to a dedicated mill levy may not be impaired as a result of consolidation of levies under this section.

**SECTION 35.** Chapter 63-01.1 of the North Dakota Century Code is repealed.

Approved April 15, 2009  
Filed April 15, 2009

# ALCOHOLIC BEVERAGES

## CHAPTER 87

### HOUSE BILL NO. 1087

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 5-01-04 and 5-01-14 and subsection 5 of section 5-01-16 of the North Dakota Century Code, relating to obsolete references to the federal bureau of alcohol, tobacco, firearms and explosives for alcoholic beverage regulation purposes and monthly sales report filing requirements for microbrew pubs; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 5-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.** A person may manufacture alcoholic beverages for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the ~~alcohol and tobacco tax and trade bureau of alcohol, tobacco, firearms and explosives~~ of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the ~~alcohol and tobacco tax and trade bureau of the United States treasury department~~ is guilty of a class A misdemeanor and property used for the same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of alcohol within this state if the person has secured a license from the ~~state~~ tax commissioner. This license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the ~~state~~ tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. This license shall allow sale to only licensed wholesalers.

**SECTION 2. AMENDMENT.** Section 5-01-14 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-14. Microbrew pubs - Licensing - Taxes.** A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; and sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises. A microbrew pub may not engage in any wholesaling activities. All sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub

directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales are made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [47 liter] per patron. Licenses under this section entitle the microbrew pub to sell beer manufactured on the premises for off premises consumption, in brewery-sealed containers of not less than one-half gallon [1.89 liters] and not more than three gallons [11.36 liters]. This section may not be superseded under chapters 11-09.1 and 40-05.1.

**SECTION 3. AMENDMENT.** Subsection 5 of section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverage per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the ~~state~~ tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall report and pay the wholesaler and retailer taxes to the ~~state~~ tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.6-02. The reports are due January fifteenth of the year following the year sales and shipments were made. When the fifteenth day of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in format as prescribed by the ~~state~~ tax commissioner. The ~~state~~ tax commissioner may require that the report be submitted in an electronic format approved by the ~~state~~ tax commissioner. The ~~state~~ tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the ~~state~~ tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the ~~state~~ tax commissioner may notify both the alcohol and tobacco tax and trade bureau of alcohol, tobacco, firearms and explosives of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act is effective for taxable periods beginning after June 30, 2009.

Approved March 19, 2009

Filed March 24, 2009

**CHAPTER 88****SENATE BILL NO. 2096**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to medical care of intoxicated persons.

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

**SECTION 1. AMENDMENT.** Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-05.1. Public intoxication - Assistance - Medical care.** A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in jail, or if the person is admitted into a hospital, or detoxification center, or jail upon admission, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city ~~or~~, county, ambulance service, or medical service provider on account of an intoxicated person shall be recoverable from that person.

Approved April 22, 2009

Filed April 23, 2009

## CHAPTER 89

### HOUSE BILL NO. 1249

(Representatives Ruby, Bellew, Headland, Kasper)  
(Senators Hogue, Miller)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to a domestic distillery license; and to amend and reenact sections 5-03-06 and 5-03-07 of the North Dakota Century Code, relating to examination by and reports to the tax commissioner and the imposition of tax on alcoholic beverages sold in this state.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

##### Domestic distillery.

1. The state tax commissioner may issue a domestic distillery license to the owner or operator of a distillery that is located within this state which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. A domestic distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The state tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.
  
2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or enclosed containers, at a designated trade show, convention, festival, or similar event approved by the state tax commissioner. A domestic distillery may not engage in any wholesaling

activities. All sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery also may own or operate a winery.
4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail, including all spirits shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

**SECTION 2. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-06. Examination by tax commissioner - Penalty for improper returns.** The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery, microbrew pub, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any wholesaler, domestic winery, domestic distillery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any wholesaler, domestic winery, domestic distillery, or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due

does not apply. If any wholesaler, domestic winery, domestic distillery, or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler, domestic winery, domestic distillery, or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any wholesaler, domestic winery, domestic distillery, or microbrew pub may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

<sup>62</sup> **SECTION 3. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$ .08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Sparkling wine - per wine gallon	1.00 (.264 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

Approved April 21, 2009  
 Filed April 22, 2009

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<sup>62</sup> Section 5-03-07 was also amended by section 1 of Senate Bill No. 2416, chapter 92.

**CHAPTER 90****HOUSE BILL NO. 1345**  
(Representative Kretschmar)

AN ACT to amend and reenact section 5-02-02 of the North Dakota Century Code, relating to the qualifications of a licensee for a retail alcoholic beverage license.

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

**SECTION 1. AMENDMENT.** Section 5-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-02. Qualifications for license.** ~~No~~ A retail license may not be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than an organization, must be a legal resident of the United States ~~and a resident of this state~~ and be a person of good moral character.
2. If the applicant is:
  - a. A corporation, then:
    - (1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
    - (2) The shareholders:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

- b. A limited liability company, then:
  - (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
  - (2) The members:
    - (a) Who are individuals, must be legal residents of the United States and of good moral character; and

- (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
    - (3) The applicant must first be properly registered with the secretary of state.
  - c. A limited partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
    - (2) The general partners and limited partners:
      - (a) If individuals, must be legal residents of the United States and of good moral character; and
      - (b) If organizations, must meet the requirements of this section for applicants that are organizations.
    - (3) The applicant must first be properly registered with the secretary of state.
  - d. A general partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
    - (2) The partners:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
  - e. A limited liability partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
    - (2) The partners:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- Limited liability partnership applicants must first be properly registered with the secretary of state.
3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic

beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.

4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
5. The applicant for a state license must have first secured a local license.
6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.
8. As a condition precedent to a background check, the attorney general may require the applicant to pay, in advance, an estimated additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available. The estimated additional fee must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. In addition, the attorney general may require the applicant or such other person subject to a background check to execute a written consent if needed by the attorney general to obtain background or criminal history information.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 91

### HOUSE BILL NO. 1500

(Representatives S. Meyer, DeKrey, Delmore)  
(Senators Miller, Potter)

AN ACT to amend and reenact section 5-02-06 of the North Dakota Century Code, relating to individuals under twenty-one years of age serving alcoholic beverages.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **5-02-06. Prohibitions for individuals under twenty-one years of age - Penalty - Exceptions.**

1. Except as permitted in this section, a licensee who dispenses alcoholic beverages to an individual under twenty-one years of age, or who permits an individual under twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
3. An individual under twenty-one years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
4. An individual under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.
5. An individual who is ~~nineteen~~ eighteen years of age or older but under twenty-one years of age may be employed by a restaurant as provided in subsection 2 to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one

or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ individuals from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of an individual twenty-one or more years of age.

6. For purposes of this section, an individual is not twenty-one years of age until eight a.m. on that individual's twenty-first birthday.
7. If an individual is convicted of this section, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

Approved March 19, 2009  
Filed March 24, 2009

## CHAPTER 92

### SENATE BILL NO. 2416

(Senators Potter, Nelson, Triplett)  
(Representatives Dahl, N. Johnson, S. Meyer)

AN ACT to amend and reenact section 5-03-07 of the North Dakota Century Code, relating to imposition of alcoholic beverage taxes at the same rate for sparkling wine as for still wine; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>63</sup> **SECTION 1. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
<u>Wine, including sparkling wine,</u> containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
<del>Sparkling wine - per wine gallon</del>	<del>1.00 (.264 per liter)</del>
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>63</sup> Section 5-03-07 was also amended by section 3 of House Bill No. 1249, chapter 89.

# BANKS AND BANKING

## CHAPTER 93

### HOUSE BILL NO. 1154

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact a new subsection to section 6-01-02 of the North Dakota Century Code, relating to definitions for the department of financial institutions.

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

**SECTION 1.** A new subsection to section 6-01-02 of the North Dakota Century Code is created and enacted as follows:

"Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of Federal Regulations, part 325, in effect on August 1, 2009.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 94****HOUSE BILL NO. 1152**

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact section 6-01-04.1 of the North Dakota Century Code, relating to the removal of officers, directors, and employees of financial corporations or institutions.

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

**SECTION 1. AMENDMENT.** Section 6-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-04.1. Removal of officers, directors, and employees of financial corporations or institutions.**

1. The department of financial institutions or the board may issue and serve, upon any current or former officer, director, or employee of a financial corporation or institution subject to its jurisdiction and upon ~~the~~ a financial corporation or institution involved, a complaint stating the basis for the board's or the department's belief that the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
  - a. Violating any law, regulation, board order, or written agreement with the board;
  - b. Engaging or participating in any unsafe or unsound practice; or
  - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of ~~the~~ a financial corporation or institution. The current or former officer, director, or employee may waive the thirty-day notice requirement.
3. If no hearing is requested within twenty days of the date the complaint is served upon the current or former officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that ~~the~~ a financial corporation or institution has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter an order suspending or removing the current or former officer, director, or employee.
4. A contested or default suspension or removal order is effective immediately upon service on the current or former officer, director, or

employee and upon ~~the~~ a financial corporation or institution. A consent order is effective as agreed.

5. Any current or former officer or director, or employee suspended or removed from office any position pursuant to this section is not eligible, while under suspension or removal, ~~for reelection~~ to occupy any official position within a financial corporation or institution in North Dakota ~~for a period not exceeding three years from the effective date of the suspension or removal until the suspension or removal is terminated by the department of financial institutions or board.~~
6. When any current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation or institution is charged with a felony in state or federal court, involving dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in ~~the~~ a financial corporation's or institution's affairs. The order is effective immediately upon service of the order on ~~the~~ a financial corporation or institution and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, or similar state order or judgment is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner or the board from pursuing administrative or civil remedies.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 95****SENATE BILL NO. 2281**

(Senators Olafson, Nodland)  
(Representatives Kingsbury, Wald)

AN ACT to amend and reenact subsection 7 of section 6-03-02 of the North Dakota Century Code, relating to banks serving as custodian for health savings accounts; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Exercise, as determined by the board by order or rule, all the incidental powers as are necessary to carry on the business of banking, including discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; loaning money upon real or personal security, or both; soliciting and receiving ~~deposit deposits~~ in the nature of custodial accounts ~~funded only in savings accounts or certificates of deposit~~ for the purpose of health savings or similar health care cost funding accounts, retirement fund contracts, or pension programs, and such custodial accounts are exempt from chapter 6-05; and providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 96****HOUSE BILL NO. 1155**

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact section 6-03-06 of the North Dakota Century Code, relating to the sale of real estate loans; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-06. Sale of real estate loans.** In selling or disposing of loans made upon real estate security, no association has power to guaranty the payment or collection thereof except as necessary to sell residential mortgage loans on the secondary market, and any such guaranty made in violation of this provision is not binding on the association but is upon the officer or other person making the same.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 16, 2009

Filed April 17, 2009

**CHAPTER 97****HOUSE BILL NO. 1096**

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact section 6-03-13.1 of the North Dakota Century Code, relating to separate banking facilities.

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

**SECTION 1. AMENDMENT.** Section 6-03-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.1. Separate facilities authorized.** Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities, in addition to such service at its main banking house. Any activity incidental to the business of banking may be transacted at a separate facility, including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank. Whenever any banking institution that has been granted approval to establish and maintain a facility deems it advisable to discontinue the maintenance of the facility, the banking institution may apply to the commissioner or state banking board for cancellation and the commissioner or board may order the cancellation approval within the time the board specifies. The banking institution shall ~~publish~~ provide notice of the application as required by the board by rule.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 98****SENATE BILL NO. 2220**

(Senator Lyson)

(Representatives Dahl, Vigesaa, Wald)

AN ACT to amend and reenact section 6-03-64 of the North Dakota Century Code, relating to payment orders against minors' bank accounts.

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

**SECTION 1. AMENDMENT.** Section 6-03-64 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-64. Payment of deposits made by fiduciaries, officers, minors, and associations.** Deposits made by a person as executor, administrator, guardian, conservator, or in any other representative capacity or official position, with ~~any banking association or a bank~~, are payable to that person ~~as in such officer capacity~~, or if made ~~personally by~~ to an account upon which a minor may order payments as an account owner, ~~must~~ may be paid to the minor although the minor has no guardian or conservator or if the minor has a guardian or conservator, it is not necessary to obtain the consent of the guardian or conservator to such payment, but a ~~check payment order~~ or receipt or acquittance ~~signed~~ authorized by such the minor ~~therefor~~ is valid and binding. Deposits made by ~~any~~ a corporation, association, or society are payable to any person authorized by its board of directors or trustees to receive the same.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 99****HOUSE BILL NO. 1143**

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact subsection 1 of section 6-06-08 of the North Dakota Century Code, relating to reports of examination and late fees of state-chartered credit unions set by the state credit union board.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-06-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner and at least four times each year. The commissioner shall prescribe the forms for the reports. ~~The reports must be received by the commissioner within thirty days of the call.~~ At the discretion of the commissioner, a call may be complied with by submission of a copy of the call report e-mailed directly to the department of financial institutions or by other electronic means of transmission. The call reports are due within thirty days of the call, or according to the deadlines published on the form NCUA 5300, whichever comes first. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of ~~two hundred up to five hundred~~ up to five hundred dollars for each day of delinquency, not to exceed two thousand five hundred dollars. ~~The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section. At the discretion of the commissioner, all or part of this penalty may be waived if the reports are submitted within three days after the due date required by this section.~~

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 100****SENATE BILL NO. 2328**

(Senators Wanzek, Klein, Potter)  
(Representatives N. Johnson, Ruby, Vigesaa)

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to assessment of automated teller machine access fees for foreign cardholder transactions.

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

**SECTION 1.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

**Automated teller machines - Definitions - International charges - Application.**

1. In this section:
  - a. "Automated teller machine" means any electronic information processing device or electronic funds transfer facility located in this state that accepts or disposes cash in connection with a credit, deposit, or other account. "Automated teller machine" does not include a device that is used solely to facilitate check guarantees or check authorizations, or that is used in connection with the acceptance or dispensing of cash on a person-to-person basis.
  - b. "Foreign account" means an account with a financial institution located outside the United States.
2. An agreement to operate or share an automated teller machine may not prohibit an owner or operator of the automated teller machine from imposing on an individual who conducts a transaction using a foreign account an access fee or surcharge that is not otherwise prohibited under federal or state law.
3. This Act first applies to agreements entered into, modified, or renewed after the effective date of this section.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 101****SENATE BILL NO. 2240**

(Senators Klein, Dever)

(Representatives Belter, Boe, Wald)

AN ACT to create and enact a new section to chapter 6-08.4 of the North Dakota Century Code, relating to the powers of an industrial bank; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 6-08.4 of the North Dakota Century Code is created and enacted as follows:

**Powers of industrial bank.** An industrial bank may not accept deposits or make loans at a commercial location unless the industrial bank is owned by a financial holding company as defined in 12 U.S.C. 1841(p). For purposes of this section, "commercial location" means a location owned, operated, leased, or otherwise controlled by an entity that derives fifteen percent or more of its annual gross revenues, on a consolidated basis, including all affiliates of the entity, from engaging, on an ongoing basis, in activities that are not financial in nature or incidental to a financial activity during at least three of the prior four calendar quarters, as determined by the department of financial institutions.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 102

### SENATE BILL NO. 2103

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-15 of the North Dakota Century Code, relating to the powers of the Bank of North Dakota.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>64</sup> **SECTION 1. AMENDMENT.** Section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-15. (~~Effective through July 31, 2009~~) Powers.** The Bank of North Dakota may:

1. Make, purchase, guarantee, or hold loans:
  - a. To state-chartered or federally chartered lending agencies or institutions or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
  - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
  - e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.
  - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
  - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction,

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<sup>64</sup> Section 6-09-15 was also amended by section 1 of House Bill No. 1202, chapter 109.

- reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
- h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
  - i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
  - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
  - k. To instrumentalities of this state.
  - l. As otherwise provided by this chapter or other statutes.
  - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets.
  - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
  3. Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.
  4. Invest its funds:
    - a. In conformity with policies of the industrial commission.
    - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
    - c. In North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, not to exceed ten million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds. The Bank may invest a maximum of two hundred thousand

dollars per biennium in North Dakota-based venture capital entities that make investments in companies located outside North Dakota. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by the North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.

5. Buy and sell federal funds.
6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
10. Purchase mortgage loans on residential real property originated by financial institutions.

**(Effective after July 31, 2009) Powers.** The Bank of North Dakota may:

4. Make, purchase, or hold loans:
  - a. To state-chartered or federally chartered lending agencies or institutions or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
  - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
  - e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

- f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
  - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
  - h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
  - i. Under title 7, Code of Federal Regulations, part 1948, subpart G; part 1954, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
  - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
  - k. To instrumentalities of this state.
  - l. As otherwise provided by this chapter or other statutes.
  - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets.
  - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 104 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
3. Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.
4. Invest its funds:
- a. In conformity with policies of the industrial commission.
  - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.

5. Buy and sell federal funds.
6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
10. Purchase mortgage loans on residential real property originated by financial institutions.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 103****SENATE BILL NO. 2136**

(Government and Veterans Affairs Committee)  
(At the request of the Public Finance Authority)

AN ACT to amend and reenact section 6-09.4-06 of the North Dakota Century Code, relating to lending and borrowing powers of the public finance authority.

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

**SECTION 1. AMENDMENT.** Section 6-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.4-06. Lending and borrowing powers generally.** The public finance authority may lend money to political subdivisions or other contracting parties through the purchase or holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase or holding by the public finance authority under this chapter or chapter 40-57 and for ~~which purposes of the public finance authority's capital financing program~~ the principal amount of any one issue does not exceed ~~two~~ five hundred thousand dollars. However, the public finance authority may lend money to political subdivisions ~~or other contracting parties,~~ through the purchase ~~or holding~~ of securities issued by the political subdivisions ~~or other contracting parties~~ through the capital financing program without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the public finance authority to purchase ~~or hold~~ the securities. The capital financing program authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision ~~or other contracting party~~ concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the public finance authority, the authorizing resolution must state reasons for the public finance authority's involvement in the bond issue. The public finance authority may hold such municipal securities for any length of time it finds to be necessary. The public finance authority, for the purposes authorized by this chapter or chapter 40-57, may issue its bonds payable solely from the revenues available to the public finance authority which are authorized or pledged for payment of public finance authority obligations, and to otherwise assist political subdivisions or other contracting parties as provided in this chapter or chapter 40-57.

The public finance authority may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

Bonds of the public finance authority issued under this chapter or chapter 40-57 are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the public finance authority is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing

power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the public finance authority's obligations are obligations of the public finance authority.

All expenses incurred in carrying out the purposes of this chapter or chapter 40-57 are payable solely from revenues or funds provided or to be provided under this chapter or chapter 40-57 and nothing in this chapter may be construed to authorize the public finance authority to incur any indebtedness or liability on behalf of or payable by the state.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 104****SENATE BILL NO. 2126**

(Agriculture Committee)

(At the request of the Bank of North Dakota)

AN ACT to amend and reenact subsection 1 of section 6-09.9-02, subsection 2 of section 6-09.9-03, subsection 2 of section 6-09.11-03, subsection 4 of section 6-09.11-05, and subsection 1 of section 6-09.11-06 of the North Dakota Century Code, relating to definitions and operating loans for the Family Farm Survival Act and the family farm loan program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.9-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater or a net worth of less than ~~three hundred thousand dollars~~ an amount determined by the Bank of North Dakota. The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.

**SECTION 2. AMENDMENT.** Subsection 2 of section 6-09.9-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or ~~two hundred fifty thousand dollars~~ an amount determined by the Bank, whichever is less. The term of any participation interest purchased under this section may not exceed one year.

**SECTION 3. AMENDMENT.** Subsection 2 of section 6-09.11-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of ~~two hundred fifty thousand dollars~~ an amount determined by the Bank or ninety percent of the loan amount.

**SECTION 4. AMENDMENT.** Subsection 4 of section 6-09.11-05 of the North Dakota Century Code is amended and reenacted as follows:

4. The net worth of the applicant does not exceed ~~three hundred thousand dollars~~ an amount determined by the Bank of North Dakota.

**SECTION 5. AMENDMENT.** Subsection 1 of section 6-09.11-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A loan under this chapter may not be greater than the lesser of ~~two hundred fifty thousand dollars~~ an amount determined by the Bank of North Dakota or ninety percent of the appraised value of the security

given for the loan, with the actual percentage to be determined by the Bank of North Dakota. The Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to purchase a participation interest in a loan under this chapter.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 105****SENATE BILL NO. 2100**

(Senators Holmberg, Grindberg)

(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09.15-03 of the North Dakota Century Code, relating to the beginning entrepreneur loan guarantee program by the Bank of North Dakota.

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

**SECTION 1. AMENDMENT.** Section 6-09.15-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.15-03. Application for guarantee - Term - Annual fee.** A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to one hundred thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. ~~The Bank may not guarantee more than eight million dollars in loans outstanding under the beginning entrepreneur loan guarantee program. Total outstanding guarantees under this program at the time of issuance may not exceed five percent of the Bank's tier one capital as defined by the department of financial institutions.~~

Approved April 22, 2009  
Filed April 23, 2009

# CORPORATIONS

## CHAPTER 106

### HOUSE BILL NO. 1298

(Representative DeKrey)

(Senator Nething)

AN ACT to create and enact subsection 4 to section 10-19.1-124, subsection 4 to section 10-32-128, subsection 4 to section 10-33-115, chapter 10-36, and a new subsection to section 45-11-08.2 of the North Dakota Century Code, relating to limited liability companies, nonprofit corporations, nonprofit limited liability companies, and partnership fictitious names; to amend and reenact subsection 2 of section 10-01.1-03, section 10-01.1-06, subsection 3 of section 10-15-36, subsection 5 of section 10-15-38, sections 10-15-52.3, 10-19.1-01, 10-19.1-10, and 10-19.1-23, subsection 1 of section 10-19.1-43, section 10-19.1-46, subsection 1 of section 10-19.1-48, subsection 2 of section 10-19.1-51, subsection 1 of section 10-19.1-75, section 10-19.1-76.2, subsection 6 of section 10-19.1-87, subsection 1 of section 10-19.1-91, subsection 3 of section 10-19.1-104.4, sections 10-19.1-105 and 10-19.1-107, subsection 2 of section 10-19.1-137, section 10-19.1-146, subsection 26 of section 10-19.1-147, subsection 5 of section 10-19.1-148, sections 10-32-02, 10-32-04, and 10-32-06, subsection 1 of section 10-32-10, sections 10-32-18 and 10-32-20, subsection 2 of section 10-32-43, section 10-32-48, subsection 1 of section 10-32-80, subsection 1 of section 10-32-85, subsection 2 of section 10-32-87, subsection 1 of section 10-32-99, subsection 4 of section 10-32-107, subsection 3 of section 10-32-108.4, subsection 1 of section 10-32-109, sections 10-32-110 and 10-32-111, subsection 3 of section 10-32-140, subsection 3 of section 10-32-149, section 10-32-150, subsection 5 of section 10-32-152, sections 10-33-01 and 10-33-18, subsection 1 of section 10-33-39, subsection 1 of section 10-33-44, subsection 2 of section 10-33-46, subsection 1 of section 10-33-84, section 10-33-130, subsection 3 of section 10-33-139, subsection 2 of section 10-33-140, subsection 5 of section 10-33-141, section 38-08.1-03, subsections 27 and 28 of section 45-10.2-02, section 45-10.2-21, subsection 8 of section 45-10.2-24, subsection 3 of section 45-10.2-41, section 45-10.2-64, subsection 2 of section 45-10.2-81, subsection 3 of section 45-10.2-97, subsection 26 of section 45-10.2-109, subsection 5 of section 45-10.2-111, subsections 17 and 18 of section 45-13-01, subsections 15 and 16 of section 45-22-01, subsection 3 of section 45-22-03, subsection 2 of section 45-22-22, subsection 5 of section 45-22-23, subsections 18 and 19 of section 45-23-01, and subsection 26 of section 45-23-08 of the North Dakota Century Code, relating to commercial registered agent listing, cooperative associations, business corporations, limited liability companies, nonprofit corporations, geophysical exploration companies, limited partnerships, general partnerships, limited liability partnerships, and limited liability limited partnerships; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 10-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:
  - a. ~~One dollar for every four pages, or fraction thereof, The fee provided in section 54-09-04 for copying a record;~~
  - b. Fifteen dollars for furnishing a certificate; and
  - c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.

**SECTION 2. AMENDMENT.** Section 10-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-01.1-06. Listing of commercial registered agent.**

1. An individual residing in this state or a domestic or foreign corporation or limited liability company may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:
  - a. The name of the individual or the name, type, and jurisdiction of organization of the entity;
  - b. That the person is in the business of serving as a commercial registered agent in this state; and
  - c. The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
2. An individual residing in this state or a domestic or foreign corporation or limited liability company may file additional listings as a commercial registered agent if filed with trade names registered under chapter 47-25. The filing must be in the same manner as provided in subsection 1 and disclose the trade name being used. A listing with a trade name may provide an alternate address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
3. If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt and register a ~~fictitious~~ trade name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
- 3- 4. A commercial registered agent listing statement takes effect on filing.

- 4- 5. The secretary of state shall note the filing of the commercial registered agent listing statement in the record of the represented entity and in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

**SECTION 3. AMENDMENT.** Subsection 3 of section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report must be filed with the secretary of state on or before March thirty-first of each year following incorporation. A fee of twenty dollars must be paid to the secretary of state for filing the report. If the report does not conform to requirements, it must be returned to the cooperative for necessary corrections. The penalties for failure to file such report do not apply if it is corrected and returned within thirty days after the annual report was returned by the secretary of state. ~~The secretary of state may extend the filing date for the annual report of any cooperative if a written application for an extension is received on or before March thirty-first.~~

**SECTION 4. AMENDMENT.** Subsection 5 of section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

5. A cooperative that amends its name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

**SECTION 5. AMENDMENT.** Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-52.3. Amended certificate of authority.** A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

**SECTION 6. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
  - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
5. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
8. "Board member" means:

- a. An individual serving on the board of directors in the case of a corporation; and
  - b. An individual serving on the board of governors in the case of a limited liability company.
9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
  10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.
  11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
  12. "Constituent corporation" means a corporation or a foreign corporation that:
    - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
    - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
  13. "Constituent organization" means an organization that:
    - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
    - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
  14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
  15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
  16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
  17. "Director" means a member of the board.
  18. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a

- dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
  20. "Domestic organization" means an organization created under the laws of this state.
  21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
    - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
    - b. May be directly reproduced in paper form by the recipient through an automated process.
  23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
  24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
  25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
    - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
    - b. That the secretary of state did then:
      - (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
      - (2) Record the record in the office of the secretary of state.
  26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
  27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.

28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
29. "Good faith" means honesty in fact in the conduct of an act or transaction.
30. "Governing body" means for an organization that is:
  - a. A corporation, its board of directors;
  - b. A limited liability company, its board of governors; or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
31. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then this chapter;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
32. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
33. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal

representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

34. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.
35. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
36. "Notice":
  - a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
    - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
      - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
      - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice.
      - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
  - b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.
  - c. Is given, in all other cases:
    - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;

- (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;
- (3) When handed to the person;
- ~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:
  - (a) If there is no one in charge, when left in a conspicuous place in the office; or
  - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
- ~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
  - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
  - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
  - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice.
  - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- ~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
- f. Is deemed received when it is given.

37. "Officer" means an individual who is eighteen years of age or more who is:
- a. Elected, appointed, or otherwise designated as an officer by the board; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.
38. "Organization" ~~means~~:
- a. ~~Whether Means, whether~~ domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
  - b. Excludes ~~any~~:
    - (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and
    - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
39. "Originating records" means for an organization that is:
- a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; or
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
40. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
41. "Owners" means the holders of ownership interests in an organization.
42. "Ownership interests" means for a domestic or foreign organization that is:
- a. A corporation, its shares;
  - b. A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;

- e. A limited liability partnership, its partnership interests;
  - f. A limited liability limited partnership, its partnership interests; or
  - g. Any other organization, its governance or transferable interests.
43. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.
44. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
45. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
46. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
47. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
48. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
49. "Security" has the meaning given in section 10-04-02.
50. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within

the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

51. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
52. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
53. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
54. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
55. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.
56. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:
  - a. May preexist the merger; or
  - b. May be created by the merger.
57. "Surviving organization" means the organization resulting from a merger which:
  - a. May preexist the merger; or
  - b. May be created by the merger.
58. "Vote" includes authorization by written action.

59. "Written action" means:
- a. A written record signed by all of the persons required to take the action; or
  - b. The counterparts of a written record signed by any of the persons taking the action described.
    - (1) Each counterpart constitutes the action of the person signing; and
    - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**SECTION 7. AMENDMENT.** Section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-10. Articles.**

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The name of the registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.
2. The following provisions govern a corporation unless modified in the articles or in a shareholder control agreement under section 10-19.1-83:
  - a. A corporation has general business purposes as provided in section 10-19.1-08.
  - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
  - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
  - d. A corporation must allow cumulative voting for directors as provided in section 10-19.1-39.
  - e. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.

- f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
- g. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
- h. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- i. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- j. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- k. Subject to article XII of the Constitution of North Dakota, the The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.
- l. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- ~~l.~~ m. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
- ~~m.~~ n. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
- ~~n.~~ o. A shareholder has certain preemptive rights, unless otherwise provided by the board as provided in section 10-19.1-65.
- p. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.
- ~~o.~~ q. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except when this chapter requires the affirmative vote of:
  - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
  - (2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.

- p- r. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
  - q- s. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
  - r- t. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
  - s- u. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
  - ~~t. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.~~
  - ~~u. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.~~
3. The following provisions govern a corporation unless modified ~~either~~ in the articles, in a shareholder control agreement under section 10-19.1-83, or in the bylaws:
- a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
  - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
  - c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
  - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
  - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
  - f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
  - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
  - h. A committee:

- (1) Must consist of one or more individuals, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48; and
    - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-19.1-48.
  - i. The board may establish a special litigation committee as provided in section 10-19.1-48.
  - j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
  - k. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
  - l. The corporation may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
  - m. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
  - n. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
  - o. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.
  - p. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
  - ~~p. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 4 of section 10-19.1-73.2.~~
  - q. Indemnification of certain persons is required as provided in section 10-19.1-91.
  - r. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a

greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
- b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
- c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
- d. Directors may be classified as provided in section 10-19.1-38.
- e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
- f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
- g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
- h. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
- i. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
- ~~i.~~ j. Additional officers may be designated as provided in section 10-19.1-52.
- ~~j.~~ k. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
- ~~k.~~ l. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
- ~~l.~~ m. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
- ~~m.~~ n. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
- ~~n.~~ o. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
- ~~o.~~ p. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.

- ~~p.~~ q. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
- ~~q.~~ r. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- ~~r.~~ s. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- ~~s.~~ t. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- ~~t.~~ u. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
- ~~u.~~ v. ~~A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.~~
5. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.
6. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.
7. Subsection 4 does not limit ~~the~~:
- a. The permissible scope of a shareholder control agreement; or
  - b. The right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 8. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-23. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and all fees have been paid as

provided under section 10-19.1-147, the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

**SECTION 9. AMENDMENT.** Subsection 1 of section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.
  - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
  - c. Any participation in a meeting by ~~either of the~~ a means set forth in subsection 2 constitutes presence in person at the meeting.

**SECTION 10. AMENDMENT.** Section 10-19.1-46 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-46. Act of the board.**

1. The board shall take action by the affirmative vote of the greater of a majority of the directors present at a duly held meeting at the time the action is taken, or a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except when this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.
2. The articles of a domestic corporation that is not incorporated under chapter 10-35 may confer upon one or more directors voting powers greater than or less than those of other directors.
  - a. After the adoption of the initial articles, an amendment to the articles to confer upon one or more directors voting powers greater than or less than those of other directors requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. If the articles provide that any director has more or less than one vote on any matter, then:
    - (1) Every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the voting power of the directors.

- (2) Unless otherwise provided in the articles, the bylaws, or the resolution establishing the committee or the subcommittee, any such provision conferring greater or lesser voting power applies to voting in a committee or subcommittee.

**SECTION 11. AMENDMENT.** Subsection 1 of section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board directors currently holding office may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

**SECTION 12. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
    - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
  - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board directors or committee members currently holding office, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or
  - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

**SECTION 13. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. However, in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified of its text and effective date no later than five days after the effective time of date on which the action is taken.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

**SECTION 14. AMENDMENT.** Section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-76.2. Proxies.**

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote:
  - a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder.
  - b. By telephonic transmission remote communication or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.
    - (1) The telephonic transmission remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the shareholder. If it is reasonably concluded that the telephonic transmission remote communication or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
    - (2) A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 10-19.1-75.2 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication

according to section 10-19.1-75.2 if the shareholder did not appoint the proxy.

- c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
  - d. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or consented to by authenticated electronic communication by any one of the shareholders, unless the corporation receives from any of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation. A shareholder who revokes a proxy is not liable in any way for damages, restitution, or other claim.
  3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
    - a. Attending a meeting and voting in person; ~~or~~
    - b. Signing and delivering to ~~the~~ an officer or to a duly authorized agent ~~authorized to tabulate proxy votes~~ of the corporation either:
      - (1) A writing stating the appointment of the proxy is revoked; or
      - (2) A ~~later~~ new appointment; or
    - c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of:
      - (1) A statement that the proxy is revoked; or
      - (2) A new appointment.
  4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all earlier proxy appointments and is effective ~~when:~~
    - a. When filed with an officer or with a duly authorized agent of the corporation; or

- b. When the remote communication or the authenticated electronic communication is received by an officer or by the duly authorized agent of the corporation.

The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the shareholder.

5. The death or incapacity of a person appointing a proxy does not affect the right of the corporation to accept the authority of the proxy, unless written notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under that appointment.
6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:
  - a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
  - b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.
7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the corporation may accept a vote or action by the proxy as the action of the shareholder. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**SECTION 15. AMENDMENT.** Subsection 6 of section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
  - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange

or designated as a national market security on the nasdaq stock global market, or the nasdaq global select market.

- b. The applicability of subdivision a is determined as of:
  - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
  - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
- c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the domestic or foreign corporation, or any other ownership interest of any other organization, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

**SECTION 16. AMENDMENT.** Subsection 1 of section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
    - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a governor, director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
- d. "Special legal counsel" means counsel who has not ~~represented in the preceding five years:~~
  - (1) Represented the corporation or a related organization; in any capacity other than special legal counsel; or
  - (2) Represented a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

**SECTION 17. AMENDMENT.** Subsection 3 of section 10-19.1-104.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 18. AMENDMENT.** Section 10-19.1-105 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-105. Methods of dissolution.** A corporation may be dissolved:

1. ~~By the incorporators~~ Before the issuance of shares, pursuant to section 10-19.1-106;
2. ~~By the shareholders~~ After the issuance of shares, pursuant to sections 10-19.1-107 through 10-19.1-113.1; or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

**SECTION 19. AMENDMENT.** Section 10-19.1-107 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-107. Voluntary dissolution by shareholders after the issuance of shares.** ~~A~~ After the issuance of shares, a corporation may be dissolved ~~by the shareholders~~ when authorized in the manner set forth in this section:

1. If the corporation has outstanding shares, then:
  - a. Written notice must be given to each shareholder, whether or not entitled to vote at a meeting of shareholders within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.

- ~~2.~~ b. The proposed dissolution must be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution must be commenced.
2. If the corporation no longer has any outstanding shares, then the directors may authorize and commence the dissolution. If the directors take that action, then:
  - a. The notice of dissolution filed under section 10-19.1-108 shall so reflect; and
  - b. The directors shall have the right to revoke the dissolution proceedings in accordance with section 10-19.1-112.

**SECTION 20.** Subsection 4 to section 10-19.1-124 of the North Dakota Century Code is created and enacted as follows:

4. Any statutory and common-law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

**SECTION 21. AMENDMENT.** Subsection 2 of section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority.

**SECTION 22. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.

- c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. In the case of a domestic ~~or foreign~~ corporation, a statement of the aggregate number of shares the corporation ~~or foreign corporation~~ has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. In the case of a domestic ~~or foreign~~ corporation, a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 52 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
  3. Except for the first annual report, the annual report must be delivered to the secretary of state:
    - a. By a corporation, before August second of each year; and
    - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
  - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.

- b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. ~~The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation may make a written request for an extension to apply to reports for subsequent years.~~
6. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection ~~7~~ 6 or ~~8~~ 7.
  - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office.
  - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
- ~~7.~~ 6. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
  - a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office.
- ~~8.~~ 7. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
  - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office.

- c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
- 9- 8. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited ~~by~~ for failure to file an annual report, may be reinstated by filing a the most recent past-due report, together with the filing and penalty fees for ~~an~~ all past-due annual ~~report~~ reports and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

**SECTION 23. AMENDMENT.** Subsection 26 of section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction the fee provided in section 54-09-04 for copying a record~~ and fifteen dollars for the certificate and affixing the seal thereto.

**SECTION 24. AMENDMENT.** Subsection 5 of section 10-19.1-148 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection ~~7~~ 6 of section 10-19.1-146, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection ~~8~~ 7 of section 10-19.1-146, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:
- a. File ~~all~~ the most recent past-due annual ~~reports~~ report;
  - b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subsection 24 of section 10-19.1-147; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 24 of section 10-19.1-147.

**SECTION 25. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring organization" means the domestic or foreign organization that acquires the ownership interests of another foreign or domestic organization in an exchange.
2. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and

- b. In all other cases, the mailing address, including a zip code.
3. "Articles" or "articles of organization" means:
  - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, articles of conversion, and articles of termination.
  - b. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the secretary of state or other state office of the state of organization of the foreign limited liability company.
4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the limited liability company; or
    - (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
6. "Board" or "board of governors" means the board of governors of a limited liability company.
7. "Board member" means:
  - a. An individual serving on the board of governors in the case of a limited liability company; and
  - b. An individual serving on the board of directors in the case of a corporation.
8. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:
  - a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
  - b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board or the members.

9. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
11. "Constituent organization" means an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
12. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.
13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
  - a. The person agrees to make a contribution in the future; and
  - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
  - a. The person has the right, but not the obligation, to make a contribution in the future; and
  - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
18. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to

wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.

19. "Dissolution avoidance consent" means the consent of all remaining members:
  - a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
  - b. That the limited liability company must be continued as a legal entity without dissolution.
20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of its membership interests and may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
21. "Domestic organization" means an organization created under the laws of this state.
22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:

- (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
  - (2) Record the record in the office of the secretary of state.
27. "Financial rights" means a member's rights:
  - a. To share in profits and losses as provided in section 10-32-36;
  - b. To share in distributions as provided in section 10-32-60;
  - c. To receive interim distributions as provided in section 10-32-61; and
  - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.
29. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.
30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
33. "Governing body" means for an organization that is:
  - a. A corporation, its board of directors;
  - b. A limited liability company, its board of governors; or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
34. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then chapter 10-19.1;
    - (2) If a limited liability company, then this chapter;

- (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.
35. "Governor" means an individual serving on the board.
36. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:
- a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
37. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
38. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter excluding a nonprofit limited liability company organized under or governed by chapter 10-36.
39. "Manager" means:
- a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board; and
  - b. An individual considered elected as a manager pursuant to section 10-32-92.
40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.
41. "Membership interest" means one of the units, however designated, into which the proprietary interest of the members in a limited liability company is divided consisting of:
- a. The financial rights of a member;

- b. The right of a member to assign financial rights as provided in section 10-32-31;
  - c. The governance rights of a member, if any; and
  - d. The right of a member to assign any governance rights owned as provided in section 10-32-32.
42. "Nonprofit limited liability company" means a limited liability company organized under or governed by chapter 10-36.
43. "Notice":
- a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:
    - (1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.
    - (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
      - (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
      - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
      - (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice; or
      - (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
  - b. Is given, in all other cases:
    - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
    - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as

practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

(a) If there is no one in charge, when left in a conspicuous place in the office; or

(b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there; or

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.

(c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.

c. Is given by mail when deposited in the United States mail with sufficient postage affixed.

d. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision b, after having made sufficient arrangements for payment by the sender.

e. Is deemed received when it is given.

~~43.~~ 44. "Organization" ~~means:~~

a. ~~Whether~~ Means, whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited

liability partnership, limited liability limited partnership, or any other person having a governing statute; but

b. Excludes ~~any~~:

(1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; or

(2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

~~44.~~ 45. "Originating records" means for an organization which is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership.

~~45.~~ 46. "Owners" means the holder of ownership interests in an organization.

~~46.~~ 47. "Ownership interests" means for a domestic or foreign organization that is:

- a. A corporation, its shares;
- b. A limited liability company, its membership interests;
- c. A limited partnership, its partnership interests;
- d. A general partnership, its partnership interests;
- e. A limited liability partnership, its partnership interests;
- f. A limited liability limited partnership, its partnership interests; or
- g. Any other organization, its governance or transferable interests.

~~47.~~ 48. "Parent" of a specified organization means an organization that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for governors, or other members of the governing body of the specified organization.

~~48.~~ 49. "Pertains" means a contribution "pertains":

- a. To a particular series when the contribution is made in return for a membership interest in that particular series.
- b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

~~49.~~ 50. "Principal executive office" means:

- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
- b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.

~~50.~~ 51. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~51.~~ 52. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.

~~52.~~ 53. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
- c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~53.~~ 54. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~54.~~ 55. "Required records" are those records required to be maintained under section 10-32-51.

~~55.~~ 56. "Security" has the meaning given in section 10-04-02.

~~56.~~ 57. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but

that differ in one or more rights and preferences from another category of membership interests within that class.

~~57.~~ 58. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record.
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
  - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

~~58.~~ 59. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

~~59.~~ 60. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

~~60.~~ 61. "Surviving organization" means the organization resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

~~64.~~ 62. "Termination" means the end of the existence of a limited liability company as a legal entity and occurs when a notice of termination is:

- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
- b. Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.

~~62.~~ 63. "Vote" includes authorization by written action.

~~63.~~ 64. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the

extent necessary for concluding affairs, and disposing of assets under section 10-32-131.

64. 65. "Written action" means:

- a. A written record signed by every person required to take the action described; and
- b. The counterparts of a written record signed by any person taking the action described.
  - (1) Each counterpart constitutes the action of the persons signing it; and
  - (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 26. AMENDMENT.** Section 10-32-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-04. Purposes.** A limited liability company may be organized under this chapter for any ~~business~~ lawful purpose, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

**SECTION 27. AMENDMENT.** Section 10-32-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-06. Number of members required.** A Subject to section 10-32-67 and subsection 1 of section 10-32-109, a limited liability company must have one or more members.

**SECTION 28. AMENDMENT.** Subsection 1 of section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The limited liability company name:
  - a. Must be in the English language or in any other language expressed in English letters or characters;
  - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
  - c. May not contain ~~the~~:
    - (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; or
    - (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subdivision b;

- d. May not contain a word or phrase that indicates or implies that the limited liability company:
- (1) Is organized for a purpose other than:
    - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
    - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- e. May not be the same as, or deceptively similar to:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
    - (a) Another limited liability company;
    - (b) A corporation;
    - (c) A limited partnership;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.

**SECTION 29. AMENDMENT.** Section 10-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-18. Articles of amendment.** When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the limited liability company;
2. The amendment adopted;
3. The date of the adoption of the amendment by the members, or by the organizers or the board when no membership interests have been issued;
4. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected restates the articles in their entirety, a statement

that the restated articles supersede the original articles and all amendments to the original articles; and

- 4- 5. A statement that the amendment has been adopted pursuant to this chapter.

**SECTION 30. AMENDMENT.** Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-20. Filing of articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment.

**SECTION 31. AMENDMENT.** Subsection 2 of section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
- a. When written action is permitted to be taken by less than all members, all members must be notified ~~immediately~~ of its text and effective date no later than five days after the date on which the action is taken.
- b. Failure to provide the notice does not invalidate the written action.
- c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

**SECTION 32. AMENDMENT.** Section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-48. Proxies.**

1. At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote:
- a. By filing with a manager authorized to tabulate votes a written appointment of a proxy which is signed by the member.
- b. By ~~telephonic transmission~~ remote communication or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.
- (1) The ~~telephonic transmission~~ remote communication or authenticated electronic communication must set forth or be

submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the ~~telephonic transmission~~ remote communication or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

- (2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.
  - c. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
  - d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication by any one of the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests of the limited liability company.
  3. An appointment may be revoked at will unless the appointment is coupled with an interest, in which case the appointment may not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by ~~attending~~:
    - a. Attending a meeting and voting in person; or ~~signing~~
    - b. Signing and delivering to the manager or agent authorized to tabulate proxy votes either a:
      - (1) A writing stating that the appointment of the proxy is revoked; or a ~~later~~
      - (2) A new appointment; or
    - c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the member, of:

- (1) A statement that the proxy is revoked; or
  - (2) A new appointment.
4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all prior proxy appointments and is effective when:
- a. When filed with a manager or with a duly authorized agent of the limited liability company; or
  - b. When the remote communication or the authenticated electronic communication is received by a manager or by the duly authorized agent of the limited liability company.

The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the member.

- 4- 5. The death or incapacity of a person appointing a proxy does not revoke or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager authorized to tabulate votes before the proxy exercises the authority under that appointment.
- 5- 6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:
- a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and
  - b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.
- 6- 7. Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
- 7- 8. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**SECTION 33. AMENDMENT.** Subsection 1 of section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.
  - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
  - c. Participation in a meeting by ~~either of the~~ a means set forth in subsection 2 constitutes ~~personal~~ presence in person at the meeting.

**SECTION 34. AMENDMENT.** Subsection 1 of section 10-32-85 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the ~~board~~ governors then holding office may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

**SECTION 35. AMENDMENT.** Subsection 2 of section 10-32-87 of the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or

- (2) The unanimous affirmative vote of all members, whether entitled to vote;
- c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the ~~board~~ governors or committee members currently holding office, but the interested governor is not counted in determining the presence of a quorum and ~~may~~ shall not vote; or
- d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

**SECTION 36. AMENDMENT.** Subsection 1 of section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Limited liability company" includes a limited liability company or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a governor, the position of governor in a limited liability company;
    - (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board, the employment relationship undertaken by an employee, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
    - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
  - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

- d. "Special legal counsel" means counsel who has not represented in the preceding five years:
- (1) Represented the limited liability company or a related organization; in a capacity other than special legal counsel; or
  - (2) Represented a governor, manager, member of a committee of the board, employee, or agent whose indemnification is in issue.

**SECTION 37. AMENDMENT.** Subsection 4 of section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving organization in a merger will be a foreign organization and will transact business in this state, then the surviving organization shall comply with its governing statute. In every case, the surviving organization shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign organization;
  - b. An irrevocable appointment of the secretary of state as the agent of the surviving organization to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the surviving foreign organization promptly will pay to the dissenting owners of ownership interests of each constituent organization the amount, if any, to which the dissenting owners are entitled under its governing statute.

**SECTION 38. AMENDMENT.** Subsection 3 of section 10-32-108.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 39. AMENDMENT.** Subsection 1 of section 10-32-109 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company dissolves upon the occurrence of any of the following events:
  - a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;

- b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
- c. ~~By action of the organizers~~ Prior to accepting contributions pursuant to section 10-32-110;
- d. ~~By action of the members~~ After accepting contributions pursuant to section 10-32-111;
- e. For a limited liability company with articles of organization filed with the secretary of state:
  - (1) Before July 1, 1999, except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:
    - (a) If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained no later than ninety days after the termination of the continued membership; or
    - (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member.
  - (2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:
    - (a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member-control agreement; or
    - (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;
- f. A merger in which the limited liability company is not the surviving organization; or
- g. When terminated by the secretary of state pursuant to section 10-32-149.

**SECTION 40. AMENDMENT.** Section 10-32-110 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-110. Voluntary dissolution and termination ~~by organizers prior to accepting contributions.~~** A limited liability company that has not accepted

contributions may be dissolved and terminated ~~by the organizers~~ in the manner set forth in this section.

1. A majority of the organizers or governors shall sign articles of dissolution and termination containing:
  - a. The name of the limited liability company;
  - b. The date of organization;
  - c. A statement that contributions have not been accepted; and
  - d. A statement that no debts remain unpaid.
2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.
3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.
4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:
  - a. The name of the limited liability company;
  - b. The date the articles of dissolution and termination were filed with the secretary of state; and
  - c. A statement that the limited liability company is terminated.

**SECTION 41. AMENDMENT.** Section 10-32-111 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-111. Voluntary dissolution by members after accepting contributions.** A limited liability company may be dissolved ~~by the members after~~ accepting contributions when authorized in the manner set forth in this section.

1. If the limited liability company has members, then:
  - a. Written notice must be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided in section 10-32-40 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the limited liability company and that dissolution must be followed by the winding up and termination of the limited liability company.
  2. b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the limited liability company is dissolved.

2. If the limited liability company no longer has any members, then the governors may authorize and commence the dissolution. If the governors take that action, then:
  - a. The notice of dissolution filed under section 10-32-112 shall so reflect this fact; and
  - b. The governors shall have the right to revoke the dissolution proceedings in accordance with section 10-32-116.

**SECTION 42.** Subsection 4 to section 10-32-128 of the North Dakota Century Code is created and enacted as follows:

4. Any statutory and common-law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

**SECTION 43. AMENDMENT.** Subsection 3 of section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

3. A foreign limited liability company that changes the foreign limited liability company's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign limited liability company's name in each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority.

**SECTION 44. AMENDMENT.** Subsection 3 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.

(2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

- e. ~~The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.~~

**SECTION 45. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.** The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing articles of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.

13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
15. Filing a notice of dissolution, ten dollars.
16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
17. Filing articles of dissolution and termination, twenty dollars.
18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.
19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.

25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
  - a. ~~One dollar for every four pages, or fraction thereof~~ The fee provided in section 54-09-04 for copying a record; and
  - b. Five dollars for a search of records.
28. Furnishing a certificate of good standing, existence, or authorization:
  - a. Fifteen dollars; and
  - b. Five dollars for a search of records.
29. ~~Each page of any record or form sent by electronic transmission, one dollar.~~

**SECTION 46. AMENDMENT.** Subsection 5 of section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:
  - a. File ~~all~~ the most recent past-due annual ~~reports~~ report;
  - b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subsection 26 of section 10-32-150; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 26 of section 10-32-150.

**SECTION 47. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise requires:

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
2. "Address" means:

- a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
  - b. In any other case, the mailing address, including a zip code.
3. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.
  - b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of activity of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
6. "Board" means the board of directors of a corporation.
7. "Board member" means an individual serving on the board.
8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
10. "Director" means a member of the board.
11. "Domestic organization" means an organization created under the laws of this state.
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law; and
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.
18. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
19. "Good faith" means honesty in fact in the conduct of an act or transaction.
20. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue Acts.
22. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
26. "Notice":
  - a. Is given by a member of a corporation to the corporation or an officer of the corporation:
    - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
      - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
      - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice.
      - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
  - b. Is given, in all other cases:

- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;
  - (3) When handed to the person;
  - ~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - ~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; or
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
  - ~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.
- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - d. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision b, after having made sufficient arrangements for payment by the sender.
  - e. Is deemed received when it is given.
27. "Officer" means an individual who is more than eighteen years of age and who is:

- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
  - b. Considered elected as an officer pursuant to section 10-33-52.
28. "Organization" means:
- a. ~~Whether~~ Means, whether domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, business trust, or any other person having a governing statute; but
  - b. Excludes any:
    - (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction; or
    - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
29. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
30. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
31. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
32. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

33. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
34. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.
36. "Surviving corporation" means the corporation or foreign corporation resulting from a merger which:
  - a. May preexist the merger; or
  - b. May be created by the merger.
37. "Vote" includes authorization by written action.
38. "Written action" means:
  - a. A written record signed by all of the persons required to take the action; or
  - b. The counterparts of a written record signed by any of the persons taking the action.
    - (1) Each counterpart constitutes the action of the persons signing it; and
    - (2) All the counterparts are one written action by all of the persons signing them.

**SECTION 48. AMENDMENT.** Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-18. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

**SECTION 49. AMENDMENT.** Subsection 1 of section 10-33-39 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
  - b. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office.
  - c. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
  - d. Participation in a meeting by ~~either of the a~~ means set forth in subsection 2 constitutes presence in person at the meeting.

**SECTION 50. AMENDMENT.** Subsection 1 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the ~~board~~ directors currently holding office may establish committees having the authority of the board in the management of the activities of the corporation to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

**SECTION 51. AMENDMENT.** Subsection 2 of section 10-33-46 of the North Dakota Century Code is amended and reenacted as follows:

2. A contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing

that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

- b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;
- c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of ~~the board~~ directors or committee members currently holding office, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or
- d. The contract or transaction is a merger or consolidation described in section 10-33-85.

**SECTION 52. AMENDMENT.** Subsection 1 of section 10-33-84 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
    - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
  - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

- d. "Special legal counsel" means counsel who has not represented in the preceding five years:
- (1) Represented the corporation or a related organization, in any capacity other than special legal counsel; or
  - (2) Represented a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

**SECTION 53.** Subsection 4 to section 10-33-115 of the North Dakota Century Code is created and enacted as follows:

4. All other statutory and common-law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

**SECTION 54. AMENDMENT.** Section 10-33-130 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-130. Foreign corporation - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign corporation is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority.

**SECTION 55. AMENDMENT.** Subsection 3 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in

section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

- b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
  - (1) If the report does not conform, it must be returned to the corporation for any necessary corrections.
  - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
- e. ~~The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.~~

**SECTION 56. AMENDMENT.** Subsection 2 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The secretary of state shall charge and collect:
  - a. For furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction thereof~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.
  - b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

**SECTION 57. AMENDMENT.** Subsection 5 of section 10-33-141 of the North Dakota Century Code is amended and reenacted as follows:

- 5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 6 of section 10-33-139, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:
  - a. ~~File all the most recent past-due annual reports~~ report;
  - b. Pay the fees to the secretary of state for ~~each all past-due annual report reports~~ as provided in subdivision s of subsection 1 of section 10-33-140; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subdivision s of subsection 1 of section 10-33-140.

**SECTION 58.** Chapter 10-36 of the North Dakota Century Code is created and enacted as follows:

**10-36-01. Citation.** This chapter may be cited as the North Dakota Nonprofit Limited Liability Company Act.

**10-36-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Foreign nonprofit limited liability company" means a nonprofit limited liability company which is organized under laws other than the laws of this state for a purpose for which a nonprofit limited liability company may be organized under this chapter.
2. "Nonprofit limited liability company" means a nonprofit limited liability company, other than a foreign nonprofit limited liability company, that is organized under or governed by this chapter.

**10-36-03. Applicability of chapters 10-32 and 10-33.**

1. In any case not provided for in this chapter, chapter 10-33 governs.
2. In applying chapter 10-33 to a nonprofit limited liability company and unless the context otherwise requires, all references in chapter 10-33 to:
  - a. "Board" refers to the board of governors.
  - b. "Corporation" refers to a nonprofit limited liability company.
  - c. "Director" refers to a governor.
  - d. "Foreign corporation" refers to a foreign nonprofit limited liability company.
  - e. "Officer" refers to a manager.
3. Section 10-32-10 applies to the name of a nonprofit limited liability company as if it were a limited liability company governed under chapter 10-32.

**10-36-04. Tax status of a nonprofit limited liability company.** The status of a nonprofit limited liability company under this chapter is not determinative of its tax treatment.

**10-36-05. Limitations on persons who may be members.** An individual may not be a member of, or own any financial rights or governance rights in, a nonprofit limited liability company.

**10-36-06. Notice to and authority of attorney general.** The attorney general has the same authority and powers with regard to a nonprofit limited liability company as the attorney general has with regard to a corporation governed by chapter 10-33, including sections 10-33-121, 10-33-122, 10-33-137, 10-33-144, 10-33-145, 10-33-146, 10-33-147, 10-33-148, and 10-33-149.

**10-36-07. Secretary of state - Annual report of nonprofit limited liability companies and foreign nonprofit limited liability companies.**

1. Each nonprofit limited liability company, and each foreign nonprofit limited liability company authorized to conduct activities in this state, shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the nonprofit limited liability company or foreign nonprofit limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the nonprofit limited liability company or foreign nonprofit limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the activities in which the nonprofit limited liability company or foreign nonprofit limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the nonprofit limited liability company or foreign nonprofit limited liability company or the name or names and respective address or addresses of the managing member or members of the nonprofit limited liability company or foreign nonprofit limited liability company.
  - e. The section of the Internal Revenue Code by which its tax status is established.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the nonprofit limited liability company or foreign nonprofit limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the nonprofit limited liability company or foreign nonprofit limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. The annual report must be delivered to the secretary of state before February second of each year, except that the first annual report must be delivered before February second of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before February second, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February second, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

- b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.

  - (1) If the report does not conform, it must be returned to the nonprofit limited liability company or foreign nonprofit limited liability company for any necessary corrections.
  - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
- 4. After the date established under subsection 3, the secretary of state shall notify any nonprofit limited liability company or foreign nonprofit limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office. If the nonprofit limited liability company or foreign nonprofit limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided in section 10-36-08, the secretary of state shall restore its certificate of organization or certificate of authority to good standing.
- 5. A nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.

  - a. Thereafter, the secretary of state shall note the termination of the nonprofit limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the dissolved nonprofit limited liability company.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office.
- 6. A foreign nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.

  - a. The secretary of state shall note the revocation of the foreign nonprofit limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign nonprofit limited liability company.
  - b. Notice by the secretary of state must be mailed to the foreign nonprofit limited liability company's last registered agent at the last registered office.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.

7. A nonprofit limited liability company that was dissolved for failure to file an annual report, or a foreign nonprofit limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-36-08. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.
8. The secretary of state may waive any penalties provided in this section when an annual report form could not be delivered to the nonprofit limited liability company.

**10-36-08. Secretary of state - Fees and charges.**

1. The secretary of state shall charge and collect for:
  - a. Filing articles of organization and issuing a certificate of organization, forty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing articles of correction, twenty dollars.
  - d. Filing restated articles of organization, thirty dollars.
  - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - f. Filing a notice of dissolution, ten dollars.
  - g. Filing articles of dissolution and termination, twenty dollars.
  - h. Filing a statement of change of address of registered office or change of registered agent, or both, the fee provided in section 10-01.1-03.
  - i. Filing an application to reserve a name, ten dollars.
  - j. Filing a notice of transfer of a reserved name, ten dollars.
  - k. Filing a cancellation of reserved name, ten dollars.
  - l. Filing a consent to use of a deceptively similar name, ten dollars.
  - m. Filing an application of a foreign nonprofit limited liability company for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
  - n. Filing an application of a foreign nonprofit limited liability company for an amended certificate of authority, forty dollars.
  - o. Filing a certified statement of merger of a foreign nonprofit limited liability company holding a certificate of authority to conduct activities in this state, fifty dollars.

- p. Filing an application for withdrawal of a foreign nonprofit limited liability company and issuing a certificate of withdrawal, twenty dollars.
  - q. Filing an annual report of a domestic or foreign nonprofit limited liability company, ten dollars.
    - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
      - (a) After the date provided in subsection 3 of section 10-36-07, five dollars; and
      - (b) After the dissolution of a nonprofit limited liability company, or the revocation of the certificate of authority of a foreign nonprofit limited liability company, the reinstatement fee of forty dollars.
    - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-36-07, or the annual report lacks sufficient payment as required by this subdivision.
  - r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
  - s. Filing any other statement of a domestic or foreign nonprofit limited liability company, ten dollars.
2. The secretary of state shall charge and collect:
- a. For furnishing a certified copy of any record, instrument, or paper relating to a nonprofit limited liability company, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.
  - b. At the time of any service of process on the secretary of state as resident agent of a nonprofit limited liability company, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

### **10-36-09. Secretary of state - Enforcement - Appeal - Penalty.**

- 1. The secretary of state may administer this chapter.
- 2. The secretary of state may propound to any nonprofit limited liability company or foreign nonprofit limited liability company that is subject to this chapter and to any officer, director, or employee thereof any interrogatory as may be reasonably necessary and proper to ascertain whether the nonprofit limited liability company has complied with this chapter applicable to the nonprofit limited liability company.

- a. The interrogatory must be answered within thirty days after mailing or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.
  - b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a nonprofit limited liability company, it must be answered by the president, vice president, secretary, or assistant secretary of the nonprofit limited liability company.
  - c. The secretary of state need not file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
  - e. Each governor, manager, or employee of a nonprofit limited liability company or foreign nonprofit limited liability company who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.
    - a. Within thirty days after the service of the notice of denial, the nonprofit limited liability company or foreign nonprofit limited liability company, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
    - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
  4. If the secretary of state dissolves a nonprofit limited liability company or revokes the certificate of authority to conduct activities in this state of any foreign nonprofit limited liability company, pursuant to section 10-36-07, the nonprofit limited liability company or foreign nonprofit

limited liability company may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition, including:

- a. A copy of the nonprofit limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or
  - b. A copy of the foreign nonprofit limited liability company's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.
5. If the court order sought is one for reinstatement of a nonprofit limited liability company that has been dissolved as provided in subsection 5 of section 10-36-07, or for reinstatement of the certificate of authority of a foreign nonprofit limited liability company that has been revoked as provided in subsection 6 of section 10-36-07, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the nonprofit limited liability company or foreign nonprofit limited liability company to:
- a. File the most recent past-due annual report;
  - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subdivision q of subsection 1 of section 10-36-08; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subdivision q of subsection 1 of section 10-36-08.

**SECTION 59. AMENDMENT.** Section 38-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**38-08.1-03. Deemed doing business within state - Resident agent.** A person must be deemed doing business within this state when engaged in geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-19.1, 10-32, 45-10.2, 45-22, or 45-23 prior to such exploration, file with the secretary of state an authorization ~~designating an agent for the service of process~~ provided under the governing statute of the organization.

**SECTION 60. AMENDMENT.** Subsections 27 and 28 of section 45-10.2-02 of the North Dakota Century Code are amended and reenacted as follows:

27. "Notice":

- a. Is given to a limited partnership:
  - (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited partnership; or

- (2) When given by a form of electronic communication consented to by a general partner of the limited partnership to which the notice is given if by:
  - (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited partnership has consented to receive notice;
  - (b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited partnership has consented to receive notice;
  - (c) Posting on an electronic network on which a general partner of the limited partnership has consented to receive notice, together with separate notice to the limited partnership of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which a general partner of the limited partnership has consented to receive notice, when directed to the limited partnership.
- b. Is given to a partner of the limited partnership:
  - (1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited partnership; or
  - (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
    - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

- c. Is given in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;
  - (3) When handed to the person;
  - ~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office, or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - ~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) Any other form of electronic communication, by which the person has consented to receive notice, when directed to the person; or
  - ~~(5)~~ (6) When the method is fair and reasonable when all circumstances are considered.
- d. Is given when deposited in the United States mail with sufficient postage affixed.

- e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
- f. Is deemed received when it is given.
28. "Organization" ~~means:~~
- a. ~~Whether Means, whether~~ domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, and any other person subject to a governing statute; but
- b. Excludes ~~any:~~
- (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated under the laws of another jurisdiction; or
- (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

**SECTION 61. AMENDMENT.** Section 45-10.2-21 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-21. Consent and proxies of partners.**

1. At or before the meeting for which the appointment is to be effective, a partner may cast or authorize the casting of a vote:
- a. By filing with a partner or agent authorized to tabulate votes a written appointment of a proxy which is signed by the partner.
- b. By ~~telephonic transmission~~ remote communication or authenticated electronic communication to a partner or agent authorized to tabulate votes, whether or not accompanied by written instructions of the partner, of an appointment of a proxy.
- (1) ~~The telephonic transmission~~ remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the partner. If it is reasonably concluded that the ~~telephonic transmission~~ remote communication or authenticated electronic communication is valid, then the inspectors of election or, if there are no inspectors, then the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
- (2) A proxy so appointed may vote on behalf of the partner, or otherwise participate, in a meeting by remote communication according to section 45-10.2-20 to the extent the partner appointing the proxy would have been entitled to participate

by remote communication according to section 45-10.2-20 if the partner did not appoint the proxy.

- c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
        - d. An appointment of a proxy for partnership interests held jointly by two or more partners is valid if signed or consented to by authenticated electronic communication by any one of the partners, unless the limited partnership receives from any of those partners written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the partnership interests or in the limited partnership. A partner who revokes a proxy is not liable in any way for damages, restitution, or other claim.
3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
  - a. Attending a meeting and voting in person; or
  - b. Signing and delivering to the partner or to a duly authorized agent authorized to tabulate proxy votes either of the partnership:
    - (1) A writing stating the appointment of the proxy is revoked; or
    - (2) A ~~later~~ new appointment; or
  - c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the partner, of:
    - (1) A statement that the proxy is revoked; or
    - (2) A new appointment.
4. Revocation in either manner provided in subdivisions b and c of subsection 3 revokes all earlier proxy appointments and is effective ~~when:~~
  - a. When filed with a general partner or duly authorized agent of the limited partnership; or

- b. When the remote communication or the authenticated electronic communication is received by a partner or by the duly authorized agent of the partnership.

The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the partner.

5. The death or incapacity of a person appointing a proxy does not affect the right of the limited partnership to accept the authority of the proxy, unless written notice of the death or incapacity is received by a partner or agent authorized to tabulate votes before the proxy exercises authority under that appointment.
6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a partner:
  - a. Then any one of them may vote the partnership interests on each item of business in accordance with specific instructions contained in the appointment; or
  - b. If no specific instructions are contained in the appointment with respect to voting the partnership interests on a particular item of business, then the partnership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, then the partnership interests may not be voted.
7. Subject to section 45-10.2-22 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the limited partnership may accept a vote or action by the proxy as the action of the partner. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the partner or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a partner to vote on less than all items of business considered at a meeting of partners, then the partner is considered to be present and entitled to vote by the proxy, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a partner who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**SECTION 62. AMENDMENT.** Subsection 8 of section 45-10.2-24 of the North Dakota Century Code is amended and reenacted as follows:

8. A limited partnership that files an amendment to change its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when

the limited partnership files an amendment to the certificate of limited partnership.

**SECTION 63. AMENDMENT.** Subsection 3 of section 45-10.2-41 of the North Dakota Century Code is amended and reenacted as follows:

3. A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 45-10.2-40, and:
  - a. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
  - b. The limited partnership is a debtor in bankruptcy;
  - c. The general partner has agreed that the creditor need not exhaust limited partnership assets;
  - d. A court grants ~~permissions~~ permission to the judgment creditor to levy execution against the assets of a general partner based on a finding:
    - (1) That limited partnership assets subject to execution are clearly insufficient to satisfy the judgment;
    - (2) That exhaustion of limited partnership assets is excessively burdensome; or
    - (3) That the grant of permission is an appropriate exercise of equitable powers of the court; or
  - e. Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

**SECTION 64. AMENDMENT.** Section 45-10.2-64 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-64. (703) Rights of a creditor of partner or transferee.**

1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest.
  - a. To the extent so charged, the judgment creditor has only the rights of a transferee.
  - b. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

2. c. A charging order constitutes a lien on the transferable interest of the judgment debtor. ~~The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.~~
3. ~~At any time before foreclosure, an interest charged may be redeemed:~~
- a. ~~By the judgment debtor;~~
  - b. ~~With property other than limited partnership property, by one or more of the other partners; or~~
  - e. ~~With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.~~
4. 2. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
5. 3. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment ~~out of~~ with request to the transferable interest of the judgment debtor.

**SECTION 65. AMENDMENT.** Subsection 2 of section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.

**SECTION 66. AMENDMENT.** Subsection 3 of section 45-10.2-97 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 67. AMENDMENT.** Subsection 26 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:
- a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and

- c. Five dollars for a search of records.

**SECTION 68. AMENDMENT.** Subsection 5 of section 45-10.2-111 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited partnership that has been dissolved as provided in subsection 5 of section 45-10.2-108, or for reinstatement of the certificate of authority of a foreign limited partnership that has been revoked as provided in subsection 6 of section 45-10.2-108, then, together with any other actions the court deems proper, any such order which orders the reinstatement of the limited partnership or the reinstatement of the certificate of authority of a foreign limited partnership shall require the limited partnership or foreign limited partnership to:
  - a. File ~~all the most recent~~ past-due annual ~~reports~~ report;
  - b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subsection 25 of section 45-10.2-109; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 25 of section 45-10.2-109.

**SECTION 69.** A new subsection to section 45-11-08.2 of the North Dakota Century Code is created and enacted as follows:

Any fictitious name when the registrant is a limited partnership, a limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

**SECTION 70. AMENDMENT.** Subsections 17 and 18 of section 45-13-01 of the North Dakota Century Code are amended and reenacted as follows:

17. "Notice":
  - a. Is given to a partnership:
    - (1) When in writing and mailed or delivered to the principal executive office of the partnership; or
    - (2) When given by a form of electronic communication consented to by a managing partner to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the managing partner has consented to receive notice.
      - (b) Electronic mail, when directed to an electronic mail address at which the managing partner has consented to receive notice.
      - (c) Posting on an electronic network on which the managing partner has consented to receive notice,

together with separate notice to the managing partner of the specific posting, upon the later of:

- [1] The posting; or
- [2] The giving of the separate notice.

(d) Any other form of electronic communication by which a managing partner has consented to receive notice, when directed to the partnership.

b. Is given to a partner of the partnership:

(1) When in writing and mailed or delivered to the partner at the principal executive office address of the partnership; or

(2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;

(b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;

(c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

(1) When mailed to the person at an address designated by the person or at the last-known address of the person;

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

- (a) If there is no one in charge, when left in a conspicuous place in the office; or
  - (b) If the office is closed or the person to be notified has no office, when left at the dwelling, house, or other usual place of abode of the person with some person of suitable age and discretion residing there;
- (4) (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
- (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
  - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
  - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- (5) (6) When the method is fair and reasonable when all circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
  - f. Is deemed received when given.
18. "Organization" means:
- a. ~~Whether~~ Means, whether a domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, and any other person subject to a governing statute; but
  - b. Excludes ~~any~~:
- (1) A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a

foreign nonprofit corporation which is incorporated in another jurisdiction; or

- (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

**SECTION 71. AMENDMENT.** Subsections 15 and 16 of section 45-22-01 of the North Dakota Century Code are amended and reenacted as follows:

15. "Notice":

a. Is given to a limited liability partnership:

- (1) When in writing and mailed or delivered to a managing partner at the registered office or principal executive office of the limited liability partnership; or
- (2) When given by a form of electronic communication consented to by a managing partner of the limited liability partnership to which the notice is given if by:
  - (a) Facsimile communication, when directed to a telephone number at which a managing partner of the limited liability partnership or the partner has consented to receive notice.
  - (b) Electronic mail, when directed to an electronic mail address at which a managing partner of the limited liability partnership has consented to receive notice.
  - (c) Posting on an electronic network on which a managing partner of the limited liability partnership has consented to receive notice, together with separate notice to the limited liability partnership if the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice.
  - (d) Any other form of electronic communication by which a managing partner of the limited liability partnership has consented to receive notice, when directed to the limited liability partnership.

b. Is given to a partner of the limited liability partnership:

- (1) When in writing and mailed or delivered to the partner at the registered office or at the principal executive office of the limited liability partnership; or
- (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:

- (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
  - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
  - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.
- c. Is given in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;
  - (3) When handed to the person;
  - ~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - ~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;

- (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- (6) When the method is fair and reasonable when all circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
  - f. Is deemed received when it is given.
16. "Organization" ~~means:~~
- a. ~~Whether Means, whether~~ domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
  - b. Excludes ~~any~~:
    - (1) A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; or
    - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

**SECTION 72. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

- 3. A registration, signed by a managing partner, must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) The nature of the business to be transacted in this state.

- (3) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (4) The address of the principal executive office of the domestic limited liability partnership.
  - (5) The name of the registered agent of the domestic limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.
  - (6) The name and address of each managing partner and, if the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.
  - (7) A statement that the partnership elects to be a limited liability partnership.
  - (8) A deferred effective date, if any.
- b. With respect to a foreign limited liability partnership:
- (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.
  - (2) The jurisdiction of origin.
  - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
  - (4) The nature of the business to be transacted in this state.
  - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (6) The address of the principal executive office of the foreign limited liability partnership.
  - (7) The name of the registered agent of the foreign limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that registered agent in this state.
  - (8) The name and address of each managing partner and, if the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.

- (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

**SECTION 73. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:
- Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, ~~one dollar for every four pages, or fraction of pages~~ the fee provided in section 54-09-04 for copying a record.
  - A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, fifteen dollars.
  - ~~Each page of any record or form sent by electronic transmission, one dollar.~~

**SECTION 74. AMENDMENT.** Subsection 5 of section 45-22-23 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a domestic limited liability partnership registration that has been revoked as provided in subsection 5 of section 45-22-22.1, or for reinstatement of the registration of a foreign limited liability partnership that has been revoked as provided in subsection 6 of section 45-22-21.1, then, together with any other action the court deems proper, any such order which orders the reinstatement of the registration of a domestic or foreign limited liability partnership registration shall require the domestic or foreign limited liability partnership to:
- File ~~all the most recent past-due annual reports~~ report;
  - Pay the fees to the secretary of state for ~~each all past-due annual report~~ reports as provided in subsection 1 of section 45-22-22; and
  - Pay the reinstatement fee to the secretary of state as provided in subsection 1 of section 45-22-22.

**SECTION 75. AMENDMENT.** Subsections 18 and 19 of section 45-23-01 of the North Dakota Century Code are amended and reenacted as follows:

18. "Notice":

- a. Is given to a limited liability limited partnership:
- (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited liability limited partnership; or
  - (2) When given by a form of electronic communication consented to by a general partner of the limited liability limited partnership to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited liability limited partnership has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited liability limited partnership has consented to receive notice;
    - (c) Posting on an electronic network on which a general partner of the limited liability limited partnership has consented to receive notice, together with separate notice to the limited liability limited partnership of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) Any other form of electronic communication by which a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;
- b. Is given to a partner of the limited liability limited partnership:
- (1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited liability limited partnership; or
  - (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
    - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

- [1] The posting; or
  - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;
- c. Is given in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;
  - (3) When handed to the person;
  - (3) (4) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing there;
  - (4) (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or

- (5) (6) When the method is fair and reasonable when all circumstances are considered;
- d. Is given when deposited in the United States mail with sufficient postage affixed; ~~and~~
- e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender; and
- f. Is deemed received when given.
19. "Organization" ~~means:~~
- a. ~~Whether Means, whether~~ domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
- b. Excludes ~~any:~~
- (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; or
- (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

**SECTION 76. AMENDMENT.** Subsection 26 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
- a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
- b. Fifteen dollars for the certificate and affixing the seal thereto; and
- c. Five dollars for a search of records.

Approved April 16, 2009  
Filed April 17, 2009

## CHAPTER 107

### HOUSE BILL NO. 1100

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

AN ACT to create and enact a new subdivision to subsection 17 of section 10-04-06 of the North Dakota Century Code, relating to the sale of securities; and to amend and reenact subdivision m of subsection 9 of section 10-04-02, subsections 4, 5, 11, and 13 of section 10-04-06, subsection 2 of section 10-04-08, and subsection 2 of section 10-04-08.4 of the North Dakota Century Code, relating to the definition of institutional investor, securities transactions exempt from registration, securities registration filing fees, and electronic filing.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>65</sup> **SECTION 1. AMENDMENT.** Subdivision m of subsection 9 of section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

- m. A qualified ~~investment~~ institutional buyer as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;

<sup>66</sup> **SECTION 2. AMENDMENT.** Subsections 4, 5, 11, and 13 of section 10-04-06 of the North Dakota Century Code are amended and reenacted as follows:

- 4. A transaction by an issuer for:
  - a. Securities dividends or other distributions by a corporation, cooperative, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus;~~;~~ or the
  - b. ~~The~~ The sale or distribution of additional capital stock of a corporation or cooperative, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members; ~~including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.~~
- 5. ~~Any offer or~~ A ~~sale of securities or offer to sell to a bank, savings institution, trust company, insurance company, investment company as~~

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<sup>65</sup> Section 10-04-02 was also amended by section 1 of House Bill No. 1284, chapter 254.

<sup>66</sup> Section 10-04-06 was also amended by section 3 of House Bill No. 1100, chapter 107.

defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a broker-dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity;

- a. An institutional investor;
  - b. A federal covered investment advisor; or
  - c. Any other person exempted by rule adopted or order issued by the commissioner.
11. Any security issued in connection with an ~~employee's~~ employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:
- a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
  - b. Family members who acquire such securities from those persons through gifts or domestic relations orders;
  - c. Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
  - d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.
13. Any offer or sale of shares of capital stock issued by a professional corporation ~~or~~ professional limited liability company, or professional limited liability partnership which is organized and operated pursuant to chapter 10-31.

<sup>67</sup> **SECTION 3.** A new subdivision to subsection 17 of section 10-04-06 of the North Dakota Century Code is created and enacted as follows:

The security offered or sold under this subsection is offered or sold by a broker-dealer and agent registered in accordance with section 10-04-10, or offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid.

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<sup>67</sup> Section 10-04-06 was also amended by section 2 of House Bill No. 1100, chapter 107.

**SECTION 4. AMENDMENT.** Subsection 2 of section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Payment of a filing fee for each security or class of security to be registered as follows:
  - a. ~~One-tenth~~ For an initial filing, one-tenth of one percent of the ~~first seven hundred fifty thousand dollars of the aggregate offering price amount~~ of each security or class of security to be registered but not more than two thousand five hundred dollars.
  - b. ~~One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of~~ In no event may an initial filing fee be less than one hundred fifty dollars for each security or class of security to be registered.
  - c. ~~In no event may such filing fee be less than one hundred dollars for~~ An applicant may increase the aggregate amount of each security or class of security to be registered by filing a notice of the additional aggregate dollar amount to be registered and payment of a filing fee of one-tenth of one percent of the additional aggregate dollar amount but not more than five hundred dollars.
  - d. ~~Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year. No application shall be deemed to be filed or pending and no securities covered by such application shall be deemed to be registered unless a filing fee has been paid. The filing fee shall be retained even if the filing is withdrawn, denied, suspended, revoked, or abandoned.~~
  - e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred fifty dollars.

**SECTION 5. AMENDMENT.** Subsection 2 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold under the following conditions:
  - a. A notice of intent is filed in writing or electronically on SEC form D or other prescribed form with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.
  - b. A copy of any document filed with the securities and exchange commission is provided, as the commissioner may require.

- c. The notice filing is effective for a period of one year from the date the filing is received by the commissioner.
- d. The filing fee shall be two hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

No security may be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

Approved April 15, 2009  
Filed April 15, 2009

**CHAPTER 108****SENATE BILL NO. 2225**

(Senators Stenehjem, O'Connell)  
(Representatives Boucher, Carlson)  
(At the request of the Governor)

AN ACT to create and enact a new subsection to section 10-30.5-02 of the North Dakota Century Code, relating to the North Dakota development fund; to amend and reenact subsection 1 of section 6-09.14-01 of the North Dakota Century Code, relating to eligibility under the partnership in assisting community expansion program; to establish a grant program for early childhood facilities; to provide a report to the budget section; to provide an appropriation; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.14-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Business" means a corporation, limited liability company, partnership, individual, or association providing child care or involved in manufacturing, processing, value-added processing, and targeted industries as defined by the Bank of North Dakota.

**SECTION 2.** A new subsection to section 10-30.5-02 of the North Dakota Century Code is created and enacted as follows:

Moneys in the development fund may be used to provide financing to early childhood facilities licensed under chapter 50-11.1. Moneys also may be used to make grants or loans to match grants or loans made by county-authorized or city-authorized development corporations, job development authorities created under chapter 11-11.1 or 40-57.4, and regional planning councils for acquiring, leasing, or remodeling of real estate facilities or for acquiring equipment for establishing or expanding a licensed early childhood facility. In providing financing under this subsection, the corporation shall ensure funds are distributed fairly among for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities. An award under this subsection may not exceed one hundred thousand dollars per award.

**SECTION 3. DEPARTMENT OF COMMERCE - GRANTS FOR EARLY CHILDHOOD FACILITIES.**

1. During the biennium beginning July 1, 2009, and ending June 30, 2011, the department of commerce shall establish and implement a grant program to provide matching grants to North Dakota early childhood facilities.
2. A recipient of a grant under this section shall use the grant funds for technical assistance, a business plan, or infrastructure. A grant awarded under this section for infrastructure may not exceed \$5,000 per

recipient and a grant awarded under this section for technical assistance or a business plan may not exceed \$10,000 per recipient.

3. To receive a grant under this section, an applicant shall establish the applicant has available \$1 of matching funds for every \$3 of grant funds. The matching funds must be in cash and may come from private or public sources, or from a combination of private and public sources.
4. In making awards under this program, the department shall ensure funds are fairly distributed between for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities.

**SECTION 4. REPORT TO THE BUDGET SECTION.** The department of commerce shall report to the budget section during the second quarter of calendar year 2010 on the status of the financing provided to early childhood facilities under section 2 of this Act and the grants to early childhood facilities under section 3 of this Act.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,250,000, or so much of the sum as may be necessary, to the department of commerce for deposit in the North Dakota development fund for the purpose of providing financing to early childhood facilities, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing early childhood facility grants under section 3 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$70,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of administering sections 2 and 3 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 8. EXPIRATION DATE.** Sections 1 and 2 of this Act are effective through July 31, 2011, and after that date are ineffective.

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 109

### HOUSE BILL NO. 1202

(Representatives Keiser, Berg)  
(Senators Flakoll, Grindberg)

AN ACT to create and enact a new section to chapter 10-30.5 of the North Dakota Century Code, relating to entrepreneurship awards; to amend and reenact sections 6-09-15 and 10-30.5-04 and subdivision b of subsection 2 of section 54-60.1-01 of the North Dakota Century Code, relating to the Bank of North Dakota and North Dakota development fund, incorporated, use of funds for entrepreneurship awards; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>68</sup> **SECTION 1. AMENDMENT.** Section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-15. (Effective through July 31, 2009) Powers.** The Bank of North Dakota may:

1. Make, purchase, guarantee, or hold loans:
  - a. To state-chartered or federally chartered lending agencies or institutions or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
  - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
  - e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.
  - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.

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<sup>68</sup> Section 6-09-15 was also amended by section 1 of Senate Bill No. 2103, chapter 102.



purpose of providing funds for investment in North Dakota alternative and venture capital investments ~~and~~ early-stage capital funds, ~~and~~ entrepreneurship awards. The Bank may invest a maximum of two hundred thousand dollars per biennium in North Dakota-based venture capital entities that make investments in companies located outside North Dakota. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by the North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.

5. Buy and sell federal funds.
6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
10. Purchase mortgage loans on residential real property originated by financial institutions.

**(Effective after July 31, 2009) Powers.** The Bank of North Dakota may:

4. ~~Make, purchase, or hold loans:~~
  - a. ~~To state-chartered or federally chartered lending agencies or institutions or any other financial institutions.~~
  - b. ~~To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.~~
  - c. ~~To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.~~
  - d. ~~That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.~~
  - e. ~~That are eligible to be guaranteed under chapter 15-62-1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be~~

- added to the principal amount of the debt and thereafter accumulate interest.
- f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
  - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.
  - h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.]; as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
  - i. Under title 7, Code of Federal Regulations, part 1948, subpart G; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
  - j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
  - k. To instrumentalities of this state.
  - l. As otherwise provided by this chapter or other statutes.
  - m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets.
  - n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.
2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 104 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996.
  3. Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.
  4. Invest its funds:
    - a. In conformity with policies of the industrial commission.

- b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
5. Buy and sell federal funds.
  6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
  7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
  8. Receive deposits from any source and deposit its funds in any bank or other financial institution.
  9. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.
  10. Purchase mortgage loans on residential real property originated by financial institutions.

<sup>69</sup> **SECTION 2. AMENDMENT.** Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-04. (Effective through July 31, 2009) Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors. The funds for the entrepreneurship awards under section 3 of this Act may not exceed one million dollars.
3. ~~Borrow funds not to exceed ten million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds. The corporation may provide~~ Provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

**(Effective after July 31, 2009) Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

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<sup>69</sup> Section 10-30.5-04 was also amended by section 1 of Senate Bill No. 2110, chapter 480.

1. ~~Cooperate and contract with any private or public entity.~~
2. ~~Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.~~

**SECTION 3.** A new section to chapter 10-30.5 of the North Dakota Century Code is created and enacted as follows:

**Entrepreneurship awards:**

1. The corporation shall administer an entrepreneurship award program that provides funding awards to entrepreneurial centers and to entrepreneurs.
2. The following provisions apply to entrepreneurial center awards:
  - a. An applicant must be an entrepreneurial center certified by the department of commerce. In certifying an entrepreneurial center, the department shall consider whether the center provides business incubator services such as mentors, shared services, and relationships with educational institutions. An entrepreneurial center may not be a state entity or an institution under the control of the state board of higher education.
  - b. An award may not exceed fifty thousand dollars. An entrepreneurial center may not qualify for more than one award per year and may not receive more than five awards.
  - c. Before funds are distributed to a center under this subsection, the center shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for each dollar of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection, an entrepreneurial center was awarded state funding from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds awarded.
  - e. As a term of receipt of an award under this subsection, an entrepreneurial center shall pay back the funds awarded under this subsection. The payback schedule must be based on the center's ability to pay back the award.
  - f. An award under this subsection is not a business incentive under chapter 54-60.1.
3. The following provisions apply to entrepreneur awards:
  - a. An applicant must be an entrepreneur:
    - (1) Using the services of an entrepreneurial center certified by the department of commerce under subsection 2;

- (2) With a business plan, but the business is not required to be a primary sector business; and
  - (3) That has been approved by the entrepreneurial center and by the corporation.
- b. An award may not exceed twenty thousand dollars per business.
  - c. Before funds are distributed to an entrepreneur under this subsection, the entrepreneur shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for every four dollars of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection an entrepreneur received state funding for the business from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds received.
  - e. As a term of receipt of an award under this subsection, the entrepreneur shall pay back the funds awarded under this subsection. The payback schedule must be based upon the entrepreneur's ability to pay back the award and may include debt, equity, or a combination of debt and equity.

<sup>70</sup> **SECTION 4. AMENDMENT.** Subdivision b of subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program. An entrepreneurial center award under section 3 of this Act is not a business incentive.

**SECTION 5. EXPIRATION DATE.** Sections 3 and 4 of this Act are effective through July 31, 2015, and after that date are ineffective.

Approved April 24, 2009  
Filed April 29, 2009

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<sup>70</sup> Section 54-60.1-01 was also amended by section 2 of Senate Bill No. 2129, chapter 521.

# COUNTIES

## CHAPTER 110

### HOUSE BILL NO. 1271

(Representatives Wieland, J. Kelsh, Kilichowski)  
(Senators Bowman, Nodland, Triplett)

AN ACT to amend and reenact sections 11-07-01, 11-07-02, 11-07-03, and 11-11-02 of the North Dakota Century Code, relating to county commissioner redistricting; and to repeal section 11-07-03.1 of the North Dakota Century Code, relating to county commissioner redistricting.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-07-01. County redistricting board - Membership - Powers.** The redistricting board shall be composed of the following members:

1. The chairman of the board of county commissioners, who shall act as chairman of the redistricting board.
2. The state's attorney.
3. A citizen or member of the governing body selected by the governing body of the city having the largest population, according to the most recent federal decennial census, in the county.
4. A township supervisor selected by the township supervisors at a meeting called by the county auditor, if more than one-half of the townships are organized, whose service upon the board shall be contingent upon that person's service in office as a township supervisor, or a citizen member at large appointed by the county commission if less than one-half of the townships are organized.
5. A citizen at large selected by representatives of each of the cities of the county, excluding the largest city, if there is a total of at least three incorporated cities in such county. Such representatives shall consist of one member of and selected by the governing body of each of the cities in the county, other than the largest city. The selection of the member of the redistricting board shall be made at a meeting called by the county auditor for such purpose. In the event there is not a total of three cities in the county, or that the selection is not made at the meeting called by the county auditor, such citizen at large shall be selected by the redistricting board at its first meeting. Such citizen at large shall serve until the time of the next decennial redistricting.
6. The county auditor, or such other county official responsible for conducting elections within the county, as an ex officio, nonvoting

member for the purpose of advising the redistricting board on other existing election districts and precinct boundaries.

Vacancies upon the board shall be filled in the same manner as in the case of original selection. Such board may change the boundaries of the commissioners' districts of the county in accordance with the provisions of this chapter.

**SECTION 2. AMENDMENT.** Section 11-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-07-02. When districts must be changed - Additional meeting - Public hearing - Notice.** Each redistricting board shall, within three months after official publication of each federal decennial census, meet at the call of the chairman to organize as provided in this chapter and to consider redistricting, unless the county commissioners are currently elected at large pursuant to subsection 3 of section 11-07-03 and neither a resolution of the board of county commissioners nor a citizen petition pursuant to this section has called for such meeting. A redistricting board may additionally meet during a census interim if a resolution calling for a meeting is passed by the board of county commissioners or a petition calling for a meeting signed by ten percent of the qualified electors of the county as determined by the number of votes cast for governor in the last gubernatorial election is presented to the board of county commissioners. If any one district in the county varies more than ten percent from the average population per commissioner in such county determined by dividing the total population of the county at the last federal decennial census by the number of commissioners' districts in such county, or if county commissioners are elected at large, the redistricting board shall redistrict the county, as provided in this chapter. If redistricting of a county is required, the chairman of the redistricting board shall, within not less than thirty days after the date of the above meeting before the filing of the plan pursuant to section 11-07-03, call a meeting for the purpose of conducting a public hearing to review alternative plans for such redistricting. Notice of such meeting shall be published or caused to be published by the chairman in the official county newspaper at least ten days prior to the date of such hearing.

**SECTION 3. AMENDMENT.** Section 11-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**11-07-03. Method of redistricting - Election of commissioners at large if redistricting not accomplished by time certain.** The redistricting board shall provide for the election of county commissioners as follows:

1. In redistricting a county, the redistricting board shall first attempt to make the districts contiguous following township lines where practicable, as regular and compact in form as practicable, and as substantially equal in population as possible. In no event shall every district be formed in such a manner that the population of cities located within every district exceeds the population of the district area outside the cities in every district. In no event shall any commissioner's district vary in population more than ten percent from the average population per commissioner as determined in section 11-07-02, and any variance from the average population shall be justified in the statement filed pursuant to this section.

The geographical boundaries of new districts created by the redistricting board shall be agreed upon by a majority of such board. Redistricting shall be completed by the filing, by the chairman of the redistricting board, of an accurate description of the

approved geographical boundaries and a statement of the population of the new districts, including an explanation of any variances, with the county auditor by April first of an even-numbered year to be effective for that year's elections.

2. If the redistricting board determines that redistricting pursuant to subsection 1 is impossible or would create illogical or impracticable districts, the redistricting board shall attempt to make districts of as nearly equal populations as is practicable, but such districts, when created wholly within the boundaries of a city, may coincide with the geographical boundaries of election wards. All of the candidates seeking the office of county commissioner in a county redistricted pursuant to this section must be voted upon by the qualified electors of the entire county, but one of the commissioners to be elected must reside in each of the districts created pursuant to this section. The official ballot must designate the commissioner district of each candidate by having printed thereon the words "of commissioner district" and the designation of that district in close proximity to the candidate's name. When an individual is seeking nomination as a candidate for the office of county commissioner at a primary election, the two candidates from each of the commissioner districts receiving the highest number of votes are deemed nominated. If only one candidate is seeking nomination from a particular commissioner district, that candidate will be deemed nominated. Following redistricting pursuant to this subsection, the board of county commissioners may combine two or more of the districts so created by resolution passed by a majority of the total membership of the board. In the event that two or more commissioner districts are combined, the number of commissioners elected who must reside in the combined district is equal to the number of districts combined. In the event that a county commissioner changes the place of residence within the county after election from a particular district, the commissioner must be allowed to complete the remainder of that term of office. A candidate elected as county commissioner on a staggered basis as provided in section 11-07-04 must be elected at large, but must reside in the same district the commissioner represented whom the candidate is to succeed in office.
3. In the event that redistricting is required but not completed in the manner prescribed in this chapter subsection 1 or 2, all commissioners' districts in such county shall be abolished and, notwithstanding the provisions of section 11-11-02, thereafter county commissioners for such county shall be elected at large without regard to district representation in the manner and at the time provided in this title and shall continue to be elected at large until a proper redistricting plan is filed as required by this chapter. Notwithstanding the provisions of this section, the redistricting board shall redistrict in the manner provided in section 11-07-03-1 if so directed by the board of county commissioners acting pursuant to that section.

The geographical boundaries of new districts created by the redistricting board must be agreed upon by a majority of the board. Redistricting must be completed by the filing, by the chairman of the redistricting board, of an accurate description of the redistricting method employed and the approved geographical boundaries and a statement of the population of the new districts, including an explanation of any variances, with the county auditor by January first of an even-numbered year to be effective for that year's elections.

**SECTION 4. AMENDMENT.** Section 11-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-11-02. Commissioner must be resident of district - Exceptions.** Each county commissioner shall be chosen by the qualified electors of the district of which the commissioner is a resident, except as otherwise provided in section 11-07-03 ~~or 11-07-03.1~~.

**SECTION 5. REPEAL.** Section 11-07-03.1 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 111

### HOUSE BILL NO. 1257

(Representatives Headland, Belter, Weiler)  
(Senators Nodland, Wanzek)

AN ACT to amend and reenact subsection 2 of section 11-09.1-05 and subsection 2 of section 40-05.1-06 of the North Dakota Century Code, relating to prohibiting use of home rule authority to impose higher or lower property tax rates for certain properties; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations; ~~provided, that all property in order to be subject to the assessment provisions of this subsection.~~ Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
  - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
  - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of

ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

**SECTION 2. AMENDMENT.** Subsection 2 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations; ~~provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall.~~ Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
 Filed April 9, 2009

## CHAPTER 112

### HOUSE BILL NO. 1107

(Representative DeKrey)

(Senator Lyson)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to create and enact section 11-09.1-14 of the North Dakota Century Code, relating to expenses for indigent defense services in home rule counties; and to amend and reenact subsection 4 of section 12.1-32-08, section 27-20-49, and subsections 1, 2, and 3 of section 29-07-01.1 of the North Dakota Century Code, relating to the payment of and reimbursement for indigent defense attorney's fees and expenses.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 11-09.1-14 of the North Dakota Century Code is created and enacted as follows:

**11-09.1-14. Payment of expenses for indigent defense services.** The home rule county must pay for an attorney and those expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county ordinance.

**SECTION 2. AMENDMENT.** Subsection 4 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

4. a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. ~~The court~~ Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment following a revocation or other postjudgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the defendant's right to a hearing on the reimbursement amount. ~~It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for counsel services plus reasonable expenses.~~ The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed actual amount of attorney's fees and expenses must be demonstrated shown. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.

**SECTION 3. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-49. Costs and expenses for care of child.**

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:
  - a. The cost of medical and other examinations and treatment of a child ordered by the court.
  - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.
  - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, ~~and to a child over the age of eighteen,~~ and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the ~~commission on legal counsel for indigents~~ or the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of

payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

4. Unless it finds that there is no likelihood that the party is or will be able to pay attorney's fees and expenses, the court, in its order or judgment following a hearing under this chapter, shall order the parents or other persons legally obligated to care for and support the child, and the child if over the age of eighteen, to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission on legal counsel for indigents, and shall notify the party of the right to a hearing on the reimbursement amount. If the party or the state requests a hearing within thirty days of receiving notice under this subsection, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the party and the nature of the burden that reimbursement of costs and expenses will impose.
5. A party who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the attorney's fees and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the party or the party's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

**SECTION 4. AMENDMENT.** Subsections 1, 2, and 3 of section 29-07-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-15.1 and in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the

case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

2. A defendant for whom counsel is provided at public expense, subject to this subsection, shall reimburse the state, home rule county, or city such sums as the state, home rule county, or city expends on the defendant's behalf.
  - a. At the time counsel is provided for a defendant, the court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
  - b. ~~Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court shall notify the defendant and the prosecuting attorney of the~~ Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment entered following a revocation or other postjudgment proceeding, shall order the defendant to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission, and shall notify the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for counsel services plus reasonable expenses. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed~~ actual amount of attorney's fees and expenses must be demonstrated shown. ~~In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.~~
  - c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the ~~costs~~ attorney's fees and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The attorney general, the state's attorney of the home rule county, or the prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the attorney general, state's attorney, or city attorney determines the person for whom counsel was appointed may have funds to repay the state, home rule county, or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The attorney general, state's attorney, or prosecuting attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

Approved March 5, 2009  
Filed March 5, 2009

**CHAPTER 113****SENATE BILL NO. 2243**

(Senator Nodland)  
(Representatives Heller, Schatz)

AN ACT to authorize counties to accept certain payments by credit card, wire transfer, electronic transfer, or debit card.

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

**SECTION 1. Acceptance of payment by credit card or other payment method.** A county may accept payment by wire transfer, electronic transfer, automated clearinghouse, or a nationally recognized credit or debit card for any fee charged by, or compensation, tax, or assessment due to a county. A reasonable fee not exceeding the discount, exchange fee, or other fee incurred by the county may be added to the payment as a service charge for the acceptance of payment by a method authorized by this section. The county auditor or individual functioning as county auditor for a county may determine which nationally recognized cards or other payment methods will be accepted for payments made under this section and the amount of the applicable service charge. A person's liability for a payment is not discharged until the county has received payment or credit from the institution responsible for making the payment or credit.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 114****SENATE BILL NO. 2359**  
(Senators Cook, Nodland)  
(Representatives R. Kelsch, J. Kelsh)

AN ACT to amend and reenact sections 11-11-05, 11-28-01, 11-28-02, 11-28-03, and 11-28-04 of the North Dakota Century Code, relating to the time and place of county commission meetings and the board of county park commissioners; and to declare an emergency.

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

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

**11-11-05. Meetings of board - Time and place.** The board of county commissioners shall meet and hold ~~sessions~~ regular meetings for the transaction of business at ~~the courthouse, or at the usual place of holding court, in the first week of January, April, July, and October of each year, and may adjourn such meetings from time to time a time and place to be designated by the commission on a date certain established by resolution or ordinance of the commission.~~ The county auditor shall have power to call special sessions meetings when the interests of the county demand it. The chairman of the board, or a majority of the members thereof, may call special sessions upon giving five days' notice of the time and object of the meeting by publishing the notice in the official newspaper of the county, or by giving personal notice, in writing, to all the members of the board meetings that must be noticed in accordance with section 44-04-20.

**SECTION 2. AMENDMENT.** Section 11-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-28-01. Board of county park commissioners - Appointment by county commissioners - Number.** ~~The members of the board of county commissioners and shall establish a five-member to seven-member board of county park commissioners consisting of at least two members of the county commission and at least two resident citizens of the county appointed by the board of county commissioners shall constitute the board of county park commissioners.~~

**SECTION 3. AMENDMENT.** Section 11-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-28-02. Eligibility for appointment - Term - Vacancy - Compensation.** Any resident citizen of the county, including county, city, and township officers, is eligible for appointment to the board of county park commissioners. Each appointed county park commissioner shall hold office for a term of three years, or until a successor is appointed and qualified. Any vacancy in the board must be filled for the unexpired term by appointment by the board of county commissioners as soon as practicable. Each member of the county park board is entitled to receive the same compensation for services for each day actually engaged in the performance of the duties of the office as that paid a county commissioner but not to exceed a total of twenty-four days in any one year, and is entitled to reimbursement for actual necessary expenses incurred in the performance of the member's duties. ~~The~~

Unless otherwise agreed upon, the board of county park commissioners shall meet at the time of the regular meetings of the board of county commissioners upon the order of the chairman, and appointed members only are entitled to compensation for attendance at the concurrent meetings.

**SECTION 4. AMENDMENT.** Section 11-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**11-28-03. County auditor, county treasurer, and state's attorney shall serve board.** The county auditor or other official designated by the board shall serve as secretary of the board of county park commissioners and the county treasurer shall serve as treasurer of the board and custodian of all its funds from whatever source received. Such funds shall be placed in a separate fund and shall not be diverted to any other use or purpose. The state's attorney of the county shall act as legal adviser to the board and shall prosecute and defend any and all actions brought by or against said board. Neither the county auditor nor official designee, the county treasurer, nor the state's attorney shall receive any additional compensation for acting in their respective capacities.

**SECTION 5. AMENDMENT.** Section 11-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**11-28-04. Organization of board - Quorum - Meetings.** Within twenty days after the appointment of the board of county park commissioners, and within twenty days after any change in its personnel, the board shall meet in the courthouse of the county and shall organize by selecting one of its members as chairman. ~~Two-thirds of the members of the board shall constitute a quorum at any meeting thereof. One-half or more of the members constitutes a quorum of the board.~~ The board shall hold such meetings as may be required for the transaction of its business and activities. ~~Meetings shall~~ If the board decides to hold meetings at a time other than the time for regular meetings of the board of county commissioners, the board shall draft a schedule of regular meetings to be held throughout the year. The schedule must be filed with the county auditor and the meetings must be noticed in accordance with section 44-04-20. A special or emergency meeting may be called by the secretary upon the order of the chairman, or upon the written request of the majority of the board with notice provided in accordance with section 44-04-20. Such order or written request shall be entered on the minutes of the meeting so called. Notice of such meeting shall be delivered or mailed to each member at least five days prior to the date of the meeting. A meeting of the board may be called at any time by the chairman without notice and such meeting shall be legal and valid if attended by all members of the board.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 30, 2009  
Filed May 1, 2009

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 115

### HOUSE BILL NO. 1238

(Representatives Nelson, Hofstad, S. Meyer)  
(Senators Lyson, Triplett)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **12-44.1-02. Establishing correctional facilities - Correctional facility contracts - Regional corrections centers.**

1. For the confinement of lawfully committed persons, the governing body of a county or city shall ~~do or shall participate in the doing of, one of the following:~~
4. ~~a. Establishing and maintaining~~ Establish and maintain a correctional facility at county or city expense;:
2. ~~b. Contracting~~ Contract for correctional facility services and use of correctional facilities with another county or city ~~maintaining that maintains~~ a correctional facility or with the state or federal government;: or
3. ~~c. Establishing and maintaining~~ Establish and maintain, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.
4. 2. ~~A county or city~~ Subject to the requirements of section 2 of this Act, the governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for:
  - a. ~~The~~ the confinement of lawfully committed state, county, or city inmates from the other state; ~~or.~~
  - b. 3. The governing body of a correctional facility may contract with a state or a regional correctional center, county, or city of another state for the confinement of lawfully committed North Dakota inmates in a county, city, or regional correctional facility of another state.

- 5- 4. ~~A city or county~~ The governing body of a correctional facility may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration.
- 6- 5. ~~A city or county~~ The governing body of a correctional facility may contract for the confinement of inmates lawfully sentenced by a tribal court.
- 7- 6. ~~A city or county~~ The governing body of a correctional facility may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies ~~providing~~ that provide correctional facility services may be entered into for up to seven years.

**SECTION 2.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Contracts for out-of-state inmates - Requirements.** The governing body of a correctional facility that contracts with another state or a regional correctional center, county, or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.
2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:
  - a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state;
  - b. Any inmate with a history of institutional violence, including violence against staff or other inmates;
  - c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device;
  - d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the department of corrections and rehabilitation in advance of the placement. The state of North Dakota and any officer or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection;

- e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim; or
  - f. Any inmate who has a documented affiliation as a member of a criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.
3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.
  4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.
  5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney requests the inmate be returned to this state for prosecution, the correctional facility is responsible for the cost of returning the inmate to this state for prosecution. If an out-of-state inmate is convicted and sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.
  6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.
  7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.
  8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate before the expiration date of the out-of-state inmate's imprisonment.
  9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota; "sending state" means another state and includes a city, county, or regional

correctional center of another state; and "correctional facility" means a facility subject to this chapter.

10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 116****SENATE BILL NO. 2114**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact subsection 8 to section 12-44.1-21 of the North Dakota Century Code, relating to wireless electronic devices on or within correctional facilities; to amend and reenact section 12-44.1-06 and subsection 7 of section 12-44.1-21 of the North Dakota Century Code, relating to grades of correctional facilities and the definition of contraband; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-06. Grades of correctional facilities.**

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
  - a. "Grade one" means a correctional facility for confining inmates not more than one year.
  - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.
  - c. "Grade three" means a correctional facility for confining inmates not more than ninety-six hours.
2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.
3. ~~The department of corrections and rehabilitation, upon the request of the governing body of the correctional facility, may authorize a correctional facility to regularly confine inmates for more than one year if the correctional facility meets criteria established by the department, including:~~
  - a. ~~A classification system approved by the department.~~
  - b. ~~Education programs, including vocational education and a general equivalency diploma program.~~
  - e. ~~Treatment programs, including licensed alcohol or drug addiction counseling.~~

- d. ~~Inmate work programs, including prison industries work programs.~~
- e. ~~An infirmary and onsite medical and pharmacy services.~~
- f. ~~Indoor and outdoor recreation.~~

<sup>71</sup> **SECTION 2.** Subsection 8 to section 12-44.1-21 of the North Dakota Century Code is created and enacted as follows:

- 8. a. It is unlawful for an inmate in a correctional facility to willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.
- b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communication device to an inmate in a correctional facility or to any person for redelivery to an inmate in a correctional facility, or to allow an inmate to possess or use a wireless electronic communication device in a correctional facility except for law enforcement purposes.
- c. A violation of this subsection is a class C felony.

<sup>72</sup> **SECTION 3. AMENDMENT.** Subsection 7 of section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

- 7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, e-mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, e-mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

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<sup>71</sup> Section 12-44.1-21 was also amended by section 3 of Senate Bill No. 2114, chapter 116.

<sup>72</sup> Section 12-44.1-21 was also amended by section 2 of Senate Bill No. 2114, chapter 116.

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

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 117****HOUSE BILL NO. 1237**

(Representatives Nelson, Hofstad, S. Meyer)  
(Senators Lyson, Robinson)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to allowing correctional officers to carry weapons in certain circumstances; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Correctional officers authorized to carry weapons.** The administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the governmental agency to transport the agency's prisoners and that contract requires the officer doing the transport to be armed with a weapon. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision in this state, or another state or of a political subdivision of another state, or of the United States. The administrator of a correctional facility shall adopt a policy, approved by the director of the department of corrections and rehabilitation, which establishes the qualifications and training an officer must meet to carry a weapon under this section. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of a firearm by a qualified correctional officer acting in the course of employment as allowed by this section.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 118****SENATE BILL NO. 2116**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact subsection 8 to section 12-47-21 and a new subsection to section 12-47-36 of the North Dakota Century Code, relating to wireless electronic communications devices on or within premises under the control of the department of corrections and rehabilitation and records of offenders; to amend and reenact subsection 7 of section 12-47-21 of the North Dakota Century Code, relating to the definition of contraband; to repeal section 12-47-38 of the North Dakota Century Code, relating to contracting with county jails to house female prisoners; to provide a penalty; and to declare an emergency.

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

<sup>73</sup> **SECTION 1.** Subsection 8 to section 12-47-21 of the North Dakota Century Code is created and enacted as follows:

8. a. It is unlawful for a penitentiary inmate to willfully manufacture, possess, or use a wireless electronic communications device on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes.
- b. It is unlawful for any person to willfully deliver, or possess with intent to deliver, a wireless electronic communications device to a penitentiary inmate or to any person for redelivery to a penitentiary inmate, or to allow a penitentiary inmate to possess or use a wireless electronic communications device, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions except for law enforcement purposes.
- c. A violation of this subsection is a class C felony.

<sup>74</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this

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<sup>73</sup> Section 12-47-21 was also amended by section 2 of Senate Bill No. 2116, chapter 118.

<sup>74</sup> Section 12-47-21 was also amended by section 1 of Senate Bill No. 2116, chapter 118.

section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

**SECTION 3.** A new subsection to section 12-47-36 of the North Dakota Century Code is created and enacted as follows:

The medical, psychological, and treatment records of the department relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation may be disclosed for the purpose of conducting research and educational activities. A person conducting research or educational activities may not redisclose identifying information received under this subsection.

**SECTION 4. REPEAL.** Section 12-47-38 of the North Dakota Century Code is repealed.

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

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 119

## SENATE BILL NO. 2134

(Government and Veterans Affairs Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-48-03.1 and 12-48-03.2 of the North Dakota Century Code, relating to prison industries.

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

**SECTION 1. AMENDMENT.** Section 12-48-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-48-03.1. The director of the department of corrections and rehabilitation may establish and engage in new prison industries.**

1. ~~The warden of the state penitentiary, under the direction and with the approval of the~~ director of the department of corrections and rehabilitation; ~~is authorized to~~ may establish and engage in ~~such new~~ prison industries ~~as the director deems necessary and which are of greatest benefit to and in the best interest of the state of North Dakota, the department, and offenders committed to the legal and physical custody of the department. The warden, with the approval of the director, may also discontinue industries when necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of prison industries including the manufacture, sale, or distribution of prison industries produce or products, and, so far as is compatible with the efficient operation of the industry, shall use offenders committed to the department as laborers in such prison industries. The director and warden shall also do all things necessary and incidental to the discontinuance of these industries no longer necessary or beneficial to the department. Except as provided in subsections 1, 2, and 3, the director may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products must be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase from the prison industries is impractical or prohibited by law. The department shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:~~
4. 2. ~~All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries; or other factory that manufactures the above products, may be purchased directly by state governmental agencies, including federal, state, and tribal agencies and political subdivisions, for use in government-owned or rented buildings official business, and by nonprofit organizations, excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All~~

other prison-made hardwood, fiberesin, upholstered, and metal art work Prison industries may sell commissary items and prison industries-made clothing to inmates. Prison industries-made products may also be sold only through wholesale or retail outlets that possess a valid sales tax permit or, and if the products are manufactured under the prison industries enhancement certification program under Public Law No. 96-157 [93 Stat. 1215; 18 U.S.C. 176(c)], in interstate commerce and through export firms for sale to international markets.

2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of the office of management and budget or by the director of the department of corrections and rehabilitation.

**SECTION 2. AMENDMENT.** Section 12-48-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**12-48-03.2. Prison industry authorized to trade, barter, and exchange merchandise, equipment, and services.** Prison industry is authorized to trade, barter, and exchange merchandise, equipment, and services with any state agency if such is in the best interest of the prison industry and approved by the ~~warden and~~ **the** director of the department of corrections and rehabilitation.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 120****SENATE BILL NO. 2122**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-55.1-05, 12-59-02, 12-59-07, 12-59-08, 12-59-09, 12-59-10, 12-59-15, and 27-06-06 of the North Dakota Century Code, relating to the powers and duties of the parole board, the powers and duties of the pardon advisory board, and preparation and filing of transcripts in criminal actions.

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

**SECTION 1. AMENDMENT.** Section 12-55.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**12-55.1-05. Pardon clerk - Duties.** The director of the ~~division of parole and probation~~ department of corrections and rehabilitation or the director's designee shall serve as the pardon clerk under this chapter. The pardon clerk shall:

1. Maintain a register of all applications filed for commutation, reprieve, pardon, conditional pardon, or remission of fine and shall maintain a complete and accurate record of all proceedings in connection with the applications, including all correspondence, documents, evidence, and appearances made in connection with the application.
2. Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor under this chapter, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.
3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or remission of fine granted or refused, along with the reasons for each action.

**SECTION 2. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-02. Meetings - Compensation - Rules.** The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of seventy-five dollars per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the ~~division of~~

~~parole and probation~~, department of corrections and rehabilitation or the director's designee; is the clerk for the parole board.

**SECTION 3. AMENDMENT.** Section 12-59-07 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-07. Requirements precedent to parole.** The parole board may grant an application for parole if the board is convinced the applicant will conform to the terms and conditions of parole the board or the ~~division of parole and probation~~ department of corrections and rehabilitation may establish for the applicant. The ~~division of parole and probation~~ department of corrections and rehabilitation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

**SECTION 4. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-08. Application for parole - Emergency paroles.** An applicant for parole shall file an application with the ~~division of parole and probation~~ department of corrections and rehabilitation. The parole board may consider the application at a meeting scheduled by the chairman. The board may request an applicant to personally appear before the board before the board makes a decision on an application. The board may grant or deny parole, or grant a conditional parole, or continue its consideration to another meeting. In the event of an application for emergency parole, two members of the parole board may grant emergency parole, subject to terms and conditions of emergency parole that may be established by two members of the parole board or by the ~~division of parole and probation~~ department of corrections and rehabilitation. An applicant who receives parole remains in the legal custody of the department of corrections and rehabilitation until the expiration of the maximum term or terms of imprisonment for which the applicant was sentenced, less any sentence reduction the applicant has received.

**SECTION 5. AMENDMENT.** Section 12-59-09 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-09. Contents of application for parole.** An application for parole must be in writing, addressed to the ~~division of parole and probation~~ department of corrections and rehabilitation, and must be signed by the applicant or some person in the applicant's behalf.

**SECTION 6. AMENDMENT.** Section 12-59-10 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-10. Notice of application for parole.** The ~~division of parole and probation~~ department of corrections and rehabilitation shall provide written notice of an application for parole to the district court and state's attorney's office in the county or counties where judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.

**SECTION 7. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is amended and reenacted as follows:

**12-59-15. Breach of parole - Hearings - Order of recommitment.**

1. When it is alleged that a parolee has violated any of the terms or conditions of parole established by the parole board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the director of the ~~division of parole and probation~~ or the director's designee department of corrections and rehabilitation may issue a warrant for the arrest of the parolee.
2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.
3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation.
4. The preliminary hearing must be conducted before the director of the ~~division of parole and probation~~ department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the ~~division of parole and probation~~ department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

7. At any hearing pursuant to this section a record must be made and the parolee shall have:
  - a. Written notice of the purpose of the hearing and the alleged violations.
  - b. The opportunity to be heard in person and present witnesses and documentary evidence.
  - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
  - d. A written statement as to the reasons for the decision.
8. When the board determines the parolee has absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

**SECTION 8. AMENDMENT.** Section 27-06-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-06-06. Transcript in criminal action prepared at expense of state - Filing and use of transcript.** A judge of a district court in which a criminal action or proceeding has been tried, on that judge's own motion or on application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, to be made by the reporter at state expense whenever there is reasonable cause therefor. The transcript, when prepared, must consist of one copy to be filed in the office of the clerk of court, one copy for each party separately represented, and, ~~if parole or probation be granted, one copy to the division of parole and probation~~ the defendant is sentenced to the legal and physical custody of, or placed under the supervision and management of, the department of corrections and rehabilitation, one copy to the department. The court reporter shall receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 121

### HOUSE BILL NO. 1416

(Representatives Dahl, Delmore, Klemin)  
(Senators Freborg, Holmberg, Nelson)

AN ACT to create and enact sections 12-60-08.1 and 29-05-11.1 of the North Dakota Century Code, relating to the power of the attorney general to issue administrative subpoenas for bureau investigations and the duty of criminal justice agencies to enter warrants into the central warrant information system; and to amend and reenact subsections 1, 2, 3, 9, and 12 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders and offenders against children.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 12-60-08.1 of the North Dakota Century Code is created and enacted as follows:

**12-60-08.1. Power of the attorney general to issue subpoenas in bureau investigations.** The attorney general may issue an administrative subpoena compelling the recipient to provide records or information to an agent of the bureau of criminal investigation in any criminal matter being investigated by the bureau.

<sup>75</sup> **SECTION 2. AMENDMENT.** Subsections 1, 2, 3, 9, and 12 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:
  - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
  - b. "Department" means the department of corrections and rehabilitation.
  - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the

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<sup>75</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1041, chapter 137, section 1 of House Bill No. 1334, chapter 136, and section 3 of Senate Bill No. 2209, chapter 139.

- commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
- d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
  - e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
  - f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
  - g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides or is within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
  - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not

- exhibit mental abnormality or predatory conduct in the commission of the offense.
- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court ~~finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense~~ determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides or is temporarily domiciled in this state shall register if the individual:
    - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
    - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
    - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
  9. An individual required to register under this section who violates this section is guilty of a class C felony. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
  12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk,

moderate-risk, or high-risk level being assigned to each offender as follows:

- a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
- b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
- c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sex offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
- d. ~~The agency responsible for conducting the risk assessment~~ attorney general shall notify the offender ~~as to the level of the risk level assigned to that offender.~~ An offender may request a review of that determination with the appropriate agency attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.

**SECTION 3.** Section 29-05-11.1 of the North Dakota Century Code is created and enacted as follows:

**29-05-11.1. Duty of peace officer to enter warrant.** A peace officer who receives a warrant for the arrest of a fugitive and does not execute the warrant shall enter the warrant in the central warrant information system. A warrant of arrest for the failure to pay a fine or fee may be entered at the discretion of the peace officer. A criminal justice agency may specify whether the agency will extradite from outside the county or state and the county or state from which the agency will extradite.

Approved April 21, 2009

Filed April 23, 2009

## CHAPTER 122

### HOUSE BILL NO. 1311

(Representatives Dahl, Gruchalla, Kretschmar)  
(Senators Fischer, J. Lee, Robinson)

AN ACT to amend and reenact sections 12-60-16.1 and 12-60-16.6 of the North Dakota Century Code, relating to criminal history record information.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12-60-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-16.1. Definitions.** As used in sections 12-60-16.1 through 12-60-16.10, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.
2. "Court" means the supreme court, district courts, and municipal courts of the North Dakota judicial system.
3. "Criminal history record" means the compilation of criminal history record information of a person reported to the bureau in accordance with this chapter.
4. "Criminal history record information" includes information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.
- 4- 5. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.
- 5- 6. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:
  - a. The transmittal of the information within a criminal justice agency.
  - b. The reporting of the information as required by section 12-60-16.2.
  - c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.
- 6- 7. "Noncriminal justice agency" means an entity that is not a criminal justice agency.

- 7- 8. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.
- 8- 9. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

**SECTION 2. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5.** Only the bureau may disseminate a criminal history record ~~information~~ to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The criminal history record information has not been purged or sealed.
2. The criminal history record information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the criminal history record information is of a reportable event occurring within three years preceding the request.
3. The request is written and contains:
  - a. The name of the requester.
  - b. The fingerprints of the record subject or, if the request is made without submitting the fingerprints, the request must also include the name of the record subject and at least two items of information used by the bureau to retrieve criminal history records, including:
    - (1) The state identification number assigned to the record subject by the bureau.
    - (2) The social security number of the record subject.
    - (3) The date of birth of the record subject.
    - (4) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete. This section does not prohibit the disclosure of a criminal history record by the requester or other persons after the dissemination of the record by the bureau to the requester.

Approved April 16, 2009

Filed April 17, 2009

**CHAPTER 123****HOUSE BILL NO. 1084**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks for applicants for employment with the tax commissioner.

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

<sup>76</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The office of tax commissioner for a final applicant for a specified occupation with the tax commissioner as designated by the tax commissioner.

Approved March 19, 2009  
Filed March 24, 2009

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<sup>76</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1437, chapter 377, section 1 of Senate Bill No. 2152, chapter 379, and section 1 of Senate Bill No. 2162, chapter 422.

**CHAPTER 124****SENATE BILL NO. 2161**

(Judiciary Committee)

(At the request of the Adjutant General)

AN ACT to create and enact two new sections to chapter 12-60 of the North Dakota Century Code, relating to lost, missing, or runaway children.

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

**SECTION 1.** Two new sections to chapter 12-60 of the North Dakota Century Code are created and enacted as follows:

**Lost, missing, or runaway children.** The bureau shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost, missing, or runaway children.
2. Implement a data exchange system to compile, to maintain, and to make available for dissemination to North Dakota and to out-of-state law enforcement agencies, descriptive information that can assist appropriate agencies in recovering lost, missing, or runaway children.
3. Establish contacts and exchange information regarding lost, missing, or runaway children with the national crime information center.
4. Notify all enforcement agencies that reports of lost, missing, or runaway children must be entered as soon as the minimum level of data specified by the bureau is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the bureau immediately upon notification shall enter the information into the national crime information center file.
5. Compile and retain information regarding lost, missing, or runaway children in a separate file, in a manner that allows the information to be used by law enforcement and other agencies, considered appropriate by the bureau, for investigative purposes. The enforcement agency is responsible for maintaining the disposition of the case and periodically shall review the case with the reporting party and the bureau to ensure all available information is included and to determine the current status of the case.
6. Provide prompt confirmation of the receipt and entry of lost, missing, or runaway children reports into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 7.
7. Allow any parent, guardian, or identified family member to submit a lost, missing, or runaway child report to the bureau which will be included in the bureau file system and transmitted to the national crime information

center, if they are unable to receive services from the local law enforcement agency.

8. Compile and maintain a historical data repository relating to lost, missing, or runaway children for all of the following purposes:
  - a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of lost, missing, or runaway children.
  - b. To provide a factual and statistical base for research which would address the problem of lost, missing, or runaway children.

**School enrollment procedures to aid identification and location of lost, missing, and runaway children.**

1. When a child enrolls in a public or nonpublic school, licensed day care facility, home education, licensed day care center, licensed child care facility, headstart program, or nursery school for the first time, the school, licensed day care facility, headstart program, or school superintendent of the jurisdiction shall:
  - a. Require the child's parent, guardian, or legal custodian to present to the school, licensed day care facility, or school superintendent of the jurisdiction, within forty days of enrollment, proof of identity of the child; and
  - b. Request the appropriate school records for the child from the previous school attended by the child. The school enrolling the child shall make the request within thirty days of enrollment of the child.
2. If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection 1 within forty days of enrollment or if the school does not receive the school records of the child within sixty days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction shall notify the bureau and a local law enforcement authority that no proof of identity has been presented for the child.
3. A school shall transfer records or proof of identity of a child within ten calendar days upon receipt of request.
4. When a school, licensed day care facility, or school superintendent receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school or facility has been reported as a lost, missing, or runaway child, the school, licensed day care facility, or school superintendent shall:
  - a. Flag the records of the child; and
  - b. Notify the bureau and a local law enforcement authority if a request for school records is received from any source.

5. When the division of vital records of the state department of health receives a notice from a law enforcement authority that a child is reported as lost, missing, or runaway, the division of vital records shall:
  - a. Flag the records of the individual; and
  - b. Notify the bureau and a local law enforcement authority if a request for records is received from any source.
6. If it is necessary for law enforcement authorities to conduct an investigation on a lost, missing, or runaway child, school or day care personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.
7. For purposes of this section:
  - a. "Flag the records" means marking the division of vital records, school, day care, or home education records in such a manner that any personnel viewing that record will be automatically alerted that the child or individual has been reported as lost, missing, or runaway.
  - b. "Home education" means a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of chapter 15.1-23.
  - c. "Proof of identity" means a certified copy of a birth certificate, a certified transcript, or similar student records from the previous school, or any other documentary evidence the school, licensed day care facility, or school superintendent considers appropriate proof of identity.
  - d. "School" or "licensed day care facility" means all elementary and secondary schools, licensed day care centers, licensed child care facilities, headstart programs, and nursery schools whether public or nonpublic.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 125****HOUSE BILL NO. 1127**  
(Political Subdivisions Committee)  
(At the request of the Attorney General)

AN ACT to amend and reenact section 12-62-01.1, subsection 1 of section 19-03.1-32, and subsection 5 of section 54-12-14 of the North Dakota Century Code, relating to the time within which county and city officials have to furnish crime statistics to the attorney general's office, the powers of enforcement personnel, and the asset forfeiture fund; and to repeal sections 44-04-23, 54-12-15, and 54-12-16 of the North Dakota Century Code, relating to computer software concerns upon the advent of the year 2000 and the duties of and protections offered by the drug enforcement unit were assumed by the bureau of criminal investigation.

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

**SECTION 1. AMENDMENT.** Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-62-01.1. County and city officials to furnish crime statistics.** To assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the attorney general may obtain from the clerks of district courts, municipal courts, and criminal justice agencies all information the attorney general deems necessary to ascertain the status of crimes and criminal activity in North Dakota. It is the duty of the officials to furnish the information requested by the attorney general within thirty days of the request on whatever forms or in whatever manner the attorney general may prescribe.

**SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. Any officer of the state bureau of criminal investigation ~~or the state drug enforcement unit~~ designated by the attorney general of this state may:
  - a. Carry firearms in the performance of official duties.
  - b. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.
  - c. Make arrests without warrant for any offense under this chapter committed in the officer's presence, or if the officer has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.
  - d. Make seizures of property pursuant to this chapter.
  - e. Perform other law enforcement duties as the attorney general designates.

**SECTION 3. AMENDMENT.** Subsection 5 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation ~~and drug enforcement unit~~ incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

**SECTION 4. REPEAL.** Sections 44-04-23, 54-12-15, and 54-12-16 of the North Dakota Century Code are repealed.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 126****HOUSE BILL NO. 1223**

(Representative Klemin)  
(Senator Lyson)

AN ACT to amend and reenact sections 12-67-01, 12-67-02, 12-67-03, and 12-67-04 of the North Dakota Century Code, relating to electronic monitoring of certain offenders.

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

**SECTION 1. AMENDMENT.** Section 12-67-01 of the North Dakota Century Code is amended and reenacted as follows:

**12-67-01. Definitions.** As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility, as defined in section 12-44.1-01.
2. "Approved electronic monitoring device" means a global positioning system device or other electronic monitoring device approved by the department or the ~~court~~ administrator which is primarily intended to actively or passively monitor, record, and transmit confirmation of a participant's location or the participant's presence or nonpresence in the home.
3. "Court" means the district or municipal court having criminal or juvenile jurisdiction ~~to place over~~ a participant in electronic home detention or global positioning system monitoring.
4. "Department" means the department of corrections and rehabilitation.
5. "Home detention" means the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court, the administrator, or the department.
6. "Participant" means an adult or juvenile offender placed into an electronic monitoring program.

**SECTION 2. AMENDMENT.** Section 12-67-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-67-02. Application.**

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility who shall make the

decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

2. Except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:
  1. a. Pretrial or preadjudicatory detention.
  2. b. Probation.
  3. c. Community corrections approved by the court.
  4. d. Parole.
  5. e. Work release under chapter 12-44.1 or approved by the parole board.
  6. f. Institutional release approved by the court or the parole board.
  7. g. County jail diversion approved by the court.
  8. h. Sex offender containment.

**SECTION 3. AMENDMENT.** Section 12-67-03 of the North Dakota Century Code is amended and reenacted as follows:

**12-67-03. Program description - Fees.**

1. Subject to the availability of funding, ~~the court or, with the approval of the court,~~ the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.
2. A participant may be required to remain within the interior premises or within the property boundaries of the participant's residence at all times during the hours designated by the court, the administrator, the parole board, or the department. Instances of approved absences from the residence may include:
  - a. Work or employment approved by the court, the administrator, the parole board, or the department or traveling to or from approved employment;
  - b. Unemployment and seeking employment approved for the participant by the court, the administrator, the parole board, or the department;

- c. Medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court, the administrator, the parole board, or the department;
  - d. Attendance at an educational institution or a program approved for the participant by the court, the administrator, the parole board, or the department;
  - e. Attendance at a regularly scheduled religious service at a place of worship;
  - f. Participation in a community work release or community service program approved for the participant by the court, the administrator, the parole board, or the department; or
  - g. For another compelling reason consistent with the public interest, as approved by the court, the administrator, the parole board, or the department.
3. A participant shall admit any individual or agent designated by the court, the administrator, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.
  4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the administrator, the parole board, or the department to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
  5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the administrator, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
  6. A participant shall maintain the following:
    - a. A monitoring device in the participant's residence or on the participant's person, or both; and
    - b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.
  7. A participant shall obtain approval from the court, the administrator, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.
  8. The court, the administrator, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.

9. The court or the administrator shall assess to each participant the actual cost of the electronic monitoring. The court or the administrator also shall assess to each participant an administration fee of not more than five dollars per day which is to be used to reimburse the sheriff or other law enforcement agency for the cost of electronic monitoring enforcement services.
10. A participant shall abide by other conditions as set by the court, the administrator, the parole board, or the department.
- ~~10.~~ 11. An approved electronic monitoring device may be used to record a conversation between a participant and the monitoring device or the participant and the individual supervising the participant solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

**SECTION 4. AMENDMENT.** Section 12-67-04 of the North Dakota Century Code is amended and reenacted as follows:

**12-67-04. Consent of the participant.** Before ~~entering an order for commitment~~ for electronic home detention or global positioning system monitoring may be used, the court, the administrator, the parole board, or the department shall inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 127****HOUSE BILL NO. 1040**

(Legislative Council)  
(Judicial Process Committee)

AN ACT to provide for a procedure for missing person investigations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Missing person reports.**

1. A report of a missing person may be made to any law enforcement agency in the state. The law enforcement agency may not refuse to accept a missing person report solely on the basis that:
  - a. The missing person is an adult;
  - b. The circumstances do not indicate foul play;
  - c. The person has been missing for a short period of time;
  - d. The person has been missing for a long period of time; or
  - e. There is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance.
2. Notwithstanding subsection 1, if, upon receiving sufficient information from the person making the report, the law enforcement agency that receives the initial report of a missing person determines that a law enforcement agency in another jurisdiction is clearly the more appropriate law enforcement agency to receive the missing person report, the law enforcement agency that receives the initial report may refer the missing person report to the more appropriate law enforcement agency. The responsibility for the missing person report remains with the law enforcement agency that receives the initial missing person report until the law enforcement agency in the other jurisdiction confirms, in writing, its acceptance of responsibility for the missing person report. If the law enforcement agency to which the missing person report is referred is located within this state, that law enforcement agency shall accept or decline the responsibility for the referred missing person report within twenty-four hours after receiving the request from the initial law enforcement agency. The law enforcement agency to which the report is referred may not decline acceptance of responsibility for the missing person report without good cause shown and may not decline acceptance of responsibility for the report solely on the basis of the factors listed in subsection 1.
3. The law enforcement agency shall accept a missing person report in person. A law enforcement agency also may accept reports by telephone or by electronic or other media to the extent that the reporting is consistent with law enforcement policies or practices.

**SECTION 2. Notification and other action.**

1. When possible, the law enforcement agency shall inform the person making the report, a family member of the missing person, or other person who may be in a position to assist the law enforcement agency regarding the agency's efforts to locate the missing person about general information regarding the handling of the missing person case or information regarding intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance.
2. All DNA samples obtained in missing person cases must be forwarded immediately to the state crime laboratory to perform a DNA analysis. The state crime laboratory shall establish procedures for determining how to prioritize analysis of the samples relating to missing person cases.
3. The law enforcement agency shall submit relevant information to the federal bureau of investigation's violent criminal apprehension program as soon as is practicable.

**SECTION 3. Prompt determination of high-risk missing person - Law enforcement agency reports.**

1. A high-risk missing person is an individual whose whereabouts are not currently known and the circumstances indicate that the individual may be at risk of injury or death.
2. Upon the determination by the law enforcement agency that the missing person is a high-risk missing person, the law enforcement agency shall notify the bureau of criminal investigation. The law enforcement agency shall provide to the bureau of criminal investigation the information most likely to aid in the location and safe return of the high-risk missing person.
3. The responding local law enforcement agency immediately shall enter all collected information relating to the missing person case in available state and federal databases. If the responding local law enforcement agency does not have the capability to enter this data directly in the state and federal databases, the bureau of criminal investigation shall enter all collected information relating to the missing person case in available state and federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases.

**SECTION 4. Unidentified person or human remains identification responsibilities.**

1. If the official with custody of the human remains is not a coroner or medical examiner, the official promptly shall transfer the unidentified remains to the coroner or medical examiner to examine human remains for the purpose of identification of the human remains.

2. A coroner or medical examiner or any other person may not dispose of or engage in actions that will materially affect the unidentified human remains before the coroner or medical examiner:
  - a. Obtains samples suitable for DNA identification and archiving;
  - b. Obtains photographs of the unidentified person or human remains; and
  - c. Exhausts all other appropriate steps for identification.

**SECTION 5. Attorney general to develop missing person procedural policy.** To provide guidance to law enforcement agencies in the state, the attorney general shall develop a procedures manual, consistent with this Act, relating to the investigation of missing person cases. The attorney general shall distribute the manual to law enforcement agencies.

Approved April 28, 2009  
Filed May 1, 2009

# CRIMINAL CODE

## CHAPTER 128

### HOUSE BILL NO. 1244

(Representatives Ruby, Bellew, Gruchalla, Kasper)  
(Senators Dever, Hogue)

AN ACT to amend and reenact section 12.1-11-07 of the North Dakota Century Code, relating to defrauding a urine test.

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

**SECTION 1. AMENDMENT.** Section 12.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-11-07. Fraudulent practice in urine testing.** A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 129****SENATE BILL NO. 2293**  
(Senators Nething, Robinson, Wanzek)  
(Representatives Headland, Pollert)

AN ACT to amend and reenact subsection 2 of section 12.1-17-01 of the North Dakota Century Code, relating to the assault of state hospital employees; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is:
  - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
  - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
  - c. A class B misdemeanor except as provided in subdivision a or b.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 130****SENATE BILL NO. 2210**

(Senators Nelson, Lyson, Oehlke)  
(Representatives Hawken, Pinkerton, Potter)

AN ACT to amend and reenact section 12.1-17-09 of the North Dakota Century Code, relating to the killing or injury of a law enforcement support animal; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-17-09 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-17-09. Killing or injury of ~~certified~~, law enforcement support dog animal - Definition - Penalty.**

1. A person is guilty of a class A ~~misdemeanor~~ C felony and is subject to a civil penalty of up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a ~~certified~~, law enforcement support ~~dog~~ animal.
2. A person is guilty of a class A misdemeanor and is subject to a civil penalty of up to five thousand dollars if that person willfully:
  - a. Harasses, taunts, or provokes a law enforcement support animal;
  - b. Interferes with a law enforcement support animal while the animal is working; or
  - c. Interferes with the individual handling the animal.
3. For purposes of this section, "~~certified~~, law enforcement support ~~dog~~ animal" means any ~~dog~~ animal used by or on behalf of a law enforcement officer in the performance of the officer's functions and duties, including crowd control, corrections, arson investigation, or search and rescue, regardless of whether the ~~dog~~ animal is on or off duty.
4. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a ~~certified~~, law enforcement support ~~dog~~ animal to relieve the ~~dog~~ animal of undue suffering and pain.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 131****HOUSE BILL NO. 1272**

(Representatives Griffin, Dahl, Delmore)  
(Senators Nething, Olafson, Schneider)

AN ACT to amend and reenact sections 12.1-20-02, 12.1-20-03, and 12.1-20-04 of the North Dakota Century Code, relating to a sexual act or conduct through coercion.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-02. Definitions.** In sections 12.1-20-03 through 12.1-20-12:

1. "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
2. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
- 2- 3. "Object" means anything used in commission of a sexual act other than the person of the actor.
- 3- 4. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
- 4- 5. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

**SECTION 2. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-03. Gross sexual imposition - Penalty.**

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

- a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
  - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
  - c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;
  - d. The victim is less than fifteen years old; or
  - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
    - a. The victim is less than fifteen years old;
    - b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
    - c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.
  3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.
    - b. Otherwise the offense is a class A felony.
  4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

**SECTION 3. AMENDMENT.** Section 12.1-20-04 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-04. Sexual imposition.** A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

1. Compels the other person to submit by any threat or coercion that would render a person ~~of reasonable firmness~~ reasonably incapable of resisting; or
2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 132****HOUSE BILL NO. 1365**

(Representatives Weiler, Nathe, Porter, Wrangham)

AN ACT to prohibit recyclers, scrap metal dealers, or scrapyard operators from purchasing certain beer kegs; and to provide a penalty.

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

**SECTION 1. Purchase of beer kegs - Penalty.** A recycler, scrap metal dealer, or scrapyard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if:

1. The keg is clearly marked as the property of a brewery manufacturer; or
2. The keg's identification markings have been made illegible.

A person who willfully violates this section is guilty of a class B misdemeanor.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 133****HOUSE BILL NO. 1186**

(Representatives Delmore, DeKrey, Griffin, Mock)  
(Senators Lyson, Nelson)

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and section 12.1-27.1-03.3 of the North Dakota Century Code, relating to sexually expressive images; to repeal section 12.1-31-08 of the North Dakota Century Code, relating to possession or distribution of certain photographs or other visual representations; and to provide a penalty.

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

**SECTION 1.** A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is created and enacted as follows:

As used in this chapter, "sexually expressive image" means a photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

**SECTION 2.** Section 12.1-27.1-03.3 of the North Dakota Century Code is created and enacted as follows:

**Creation, possession, or dissemination of sexually expressive images prohibited - Exception.**

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
  - a. Without written consent from each individual in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
  - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.

4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

**SECTION 3. REPEAL.** Section 12.1-31-08 of the North Dakota Century Code is repealed.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 134****HOUSE BILL NO. 1336**

(Representatives Griffin, Delmore, Klemin)  
(Senators Lyson, Potter, Schneider)

AN ACT to create and enact a new section to chapter 12.1-31.2 of the North Dakota Century Code, relating to the issuance of an order prohibiting contact; to amend and reenact subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to an arrest without a warrant; to repeal section 14-07.1-13 of the North Dakota Century Code, relating to an order prohibiting contact; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-31.2 of the North Dakota Century Code is created and enacted as follows:

**Order prohibiting contact.**

1. If an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense is released from custody before arraignment or trial, the court authorizing the release of the individual shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the individual from having contact with the victim, an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.
2. If the court has probable cause to believe that the individual charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act of violence, the court shall require that the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to the sheriff of the county or chief of police of the city in which the individual resides.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

4. An individual who violates a court order issued under this section is guilty of a class A misdemeanor.
5. A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause that the individual has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

**SECTION 2. AMENDMENT.** Subsection 1 of section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:
  - a. For a public offense, committed or attempted in the officer's presence and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
  - b. When the person arrested has committed a felony, although not in the officer's presence.
  - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
  - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
  - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
  - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
  - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section ~~14-07.1-13~~ 1 of this Act, or for an assault involving domestic violence under section 14-07.1-11.
  - h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 19-03.1-22.1.

**SECTION 3. REPEAL.** Section 14-07.1-13 of the North Dakota Century Code is repealed.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 135****SENATE BILL NO. 2115**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.**

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
    - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
    - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
    - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
  - d. A fine.
  - e. Restitution for damages resulting from the commission of the offense.
  - f. Restoration of damaged property or other appropriate work detail.

- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
- h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

- 2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody must be stated in the criminal judgment.
- 3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
- 4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
- 5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
- 6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
- 7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.

8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
9. ~~Except as provided in section 62.1-02-04, a~~ A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor. ~~However, if an order is entered revoking a~~ upon successful completion of the term of imprisonment and a term of probation imposed as a part of the sentence, ~~the person is deemed to have been convicted of a felony.~~ This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.
10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 136

### HOUSE BILL NO. 1334

(Representatives Griffin, Delmore, Klemin)  
(Senators Lyson, Olafson, Schneider)

AN ACT to amend and reenact subsection 7 of section 12.1-32-15 of the North Dakota Century Code, relating to sexual offender registration.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>77</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall inform in writing within five days of the termination the law enforcement agency with whom the individual last registered. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration

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<sup>77</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1041, chapter 137, section 2 of House Bill No. 1416, chapter 121, and section 3 of Senate Bill No. 2209, chapter 139.

data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 16, 2009  
Filed April 17, 2009

## CHAPTER 137

### HOUSE BILL NO. 1041

(Legislative Council)  
(Judiciary Committee)

AN ACT to amend and reenact subsection 13 of section 12.1-32-15 and sections 12.1-34-01, 12.1-34-02, 12.1-34-03, and 12.1-34-06 of the North Dakota Century Code, relating to the statewide automated victim information and notification system; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>78</sup> **SECTION 1. AMENDMENT.** Subsection 13 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
  - a. Is required to register for a lifetime under subsection 8;
  - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
  - c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification ~~to the victim~~ of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

**SECTION 2. AMENDMENT.** Section 12.1-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

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<sup>78</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1334, chapter 136, section 2 of House Bill No. 1416, chapter 121, and section 3 of Senate Bill No. 2209, chapter 139.

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no-account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.
4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, legal guardian, or custodian of a victim.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Registered victim" or "registered witness" means a victim or witness registered with the statewide automated victim information and notification system.
9. "System" means the statewide automated victim information and notification system.
10. "Victim" means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
9. 11. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

**SECTION 3. AMENDMENT.** Section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-02. Fair treatment standards for victims and witnesses.** Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and

custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system.

2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed.
- 2- 3. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.
- 3- 4. Notice of pretrial release. ~~Victims~~

  - a. Registered victims must be given prompt notice by the law enforcement agency that has made an arrest in any case involving a crime of violence of any hearing in which the arrested person's pretrial release status will be determined. ~~If the alleged offender in a crime of violence is scheduled to be released prior to an appearance in court, the custodial authority shall give prompt notice must be given to the registered victim and witness or, if unavailable, to the arresting law enforcement agency, that shall provide the notice.~~
  - b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.
  - c. Victims and witnesses of crimes of violence must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
4. 5. Notice as to victims' and witnesses' participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural

steps involved in the processing of a criminal case. Victims and witnesses must be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses shall provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.

- ~~5-~~ 6. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hot lines, social service agencies, and domestic violence programs. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.
- ~~6-~~ 7. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
- ~~7-~~ 8. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.
- ~~8-~~ 9. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.
- ~~9-~~ 10. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.

- ~~40.~~ 11. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court.
- ~~44.~~ 12. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.
- ~~42.~~ 13. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
- ~~43.~~ 14. Notice as to scheduling of hearing. Victims Registered victims must be informed ~~by the prosecuting attorney~~ of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. Victims who are not registered must be given the same information by the prosecuting attorney. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
- ~~44.~~ 15. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.
- ~~45.~~ 16. Notice of final disposition and parole procedures. Victims Registered victims and witnesses must be informed ~~by the prosecuting attorney~~ of the final disposition of any criminal case. Victims who are not registered must be given the same notice by the prosecuting attorney. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.

- ~~46.~~ 17. Prompt notice of custodial release. ~~Victims~~ Registered victims and witnesses must be informed by the ~~appropriate custodial authority~~ whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Victims who are not registered must be given the same notice by the appropriate custodial authority. Notification must include the transfer of the defendant to a work-release program, a community residential program, or transfer to a mental health facility. All notices to the registered victim and witnesses concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.
- ~~47.~~ 18. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. ~~If the offender will make a personal appearance, notice~~ Notice must be given by the parole board or pardon clerk informing the registered victim of the pending review ~~and of the victim's rights under this section.~~ The registered victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.
- ~~48.~~ 19. Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

**SECTION 4. AMENDMENT.** Section 12.1-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-03. Responsibilities of victims and witnesses.** Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.

3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of ~~address~~ contact information. ~~The address~~ All contact information provided to ~~these persons~~ must be kept confidential.

**SECTION 5. AMENDMENT.** Section 12.1-34-06 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-06. Statewide automated victim information and notification system.**

1. The information technology department may establish a statewide automated victim information and notification system that ~~may be administered by the department of corrections and rehabilitation and must:~~
  - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public ~~web site~~ website.
  - b. Notify a registered victim by telephone, mail, or e-mail ~~when any of the following events affect an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility in the state:~~
    - (1) ~~The offender is transferred or assigned to another facility.~~
    - (2) ~~The offender is transferred to the custody of another agency outside the state.~~
    - (3) ~~The offender is given a different security classification.~~
    - (4) ~~The offender is released on temporary leave or otherwise.~~
    - (5) ~~The offender is discharged.~~
    - (6) ~~The offender has escaped.~~
    - (7) ~~The offender has been served with a protective order that was requested by the victim in accordance with this chapter.~~
  - c. Notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding ~~at which the victim is entitled to be present~~, a scheduled parole or pardon hearing review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
  - d. Notify a registered victim by telephone, mail, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement.

- e. Notify a registered victim by telephone, mail, or e-mail when a protective order requested by the victim has been served upon the respondent.
  - f. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility or for a registered sexual offender by calling the system on a toll-free telephone number or by accessing the system through a public ~~web site~~ website.
2. If a statewide automated victim information and notification system is established, the provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
  3. If a statewide automated victim information and notification system is established, the ~~system operator~~ user agency shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
  4. ~~Custodial~~ All affected entities, including custodial authorities, prosecuting attorneys, law enforcement agencies, courts, the attorney general's office, the pardon board, and the parole clerk, shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

**SECTION 6. EFFECTIVE DATE.** This Act becomes effective on the date the criminal justice information sharing board certifies to the legislative council that the statewide automated victim information and notification system is operational.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 138****SENATE BILL NO. 2216**

(Senators Lyson, Fischer, Seymour)

(Representatives Delmore, S. Meyer, Mueller, Porter)

AN ACT to amend and reenact section 12.1-34-07 of the North Dakota Century Code, relating to reimbursement for medical screening examinations that precede child forensic medical examinations and acute forensic medical examinations; to provide an appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12.1-34-07 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-07. Acute Medical screening and acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.**

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime and is performed within ninety-six hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the acute forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged victim.
2. A child forensic medical examination is an examination performed on an alleged child victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime. When a child forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the child forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian.
3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing an the medical screening and acute forensic medical examination.
- ~~3.~~ 4. Evidence obtained during an acute forensic a medical examination under this section may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$410,000, or so much of the sum as may be necessary, to the attorney general for the purpose of reimbursing health care facilities and health care

professionals for the costs of performing preliminary medical screening examinations, child forensic medical examinations, and acute medical examinations on alleged victims of criminal sexual conduct, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 139****SENATE BILL NO. 2209**

(Senators Dever, Miller, Nelson)  
(Representatives Dahl, Delmore, Hawken)

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to human trafficking; to amend and reenact subdivision f of subsection 2 of section 12.1-06.1-01 and subdivisions a and e of subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to racketeering definitions and registration of offenders against children and sexual offenders; and to provide a penalty.

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

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

**Human trafficking - Penalty.**

1. A person is guilty of human trafficking if the person:
  - a. Benefits financially or receives anything of value from knowing participation in human trafficking; or
  - b. Promotes, recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to promote, recruit, entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.
2. An offense under this section is a class AA felony if the person subject to human trafficking is less than eighteen years of age. Otherwise, the offense is a class A felony.
3. If the person subject to human trafficking is under the age of eighteen years, it is no defense that the actor did not know the child's age or reasonably believed the child to be eighteen years of age or older.
4. In addition to any sentence or fine imposed for a conviction of an offense under this chapter, the court shall order the person convicted to make restitution to the victim of the crime.

**Definitions.** In this chapter:

1. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtor's control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

2. "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through an actor's:
- a. Threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services:
    - (1) That person or another person would suffer bodily harm or physical restraint; or
    - (2) That any fact or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule would be exposed;
  - b. Physically restraining or threatening to physically restrain a person;
  - c. Abuse or threatened abuse of the legal process; or
  - d. Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.
- "Forced labor or services" does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.
3. "Human trafficking" means labor trafficking or sex trafficking.
4. "Labor trafficking" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:
- a. Debt bondage or forced labor or services;
  - b. Slavery or practices similar to slavery; or
  - c. The removal of organs through the use of coercion or intimidation.
5. "Sex trafficking" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:
- a. Causing the person or another to engage in sexual acts or sexual conduct in violation of chapter 12.1-20; or
  - b. Violating chapter 12.1-27.1, 12.1-27.2, or 12.1-29.

**SECTION 2. AMENDMENT.** Subdivision f of subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
- (1) Homicide.
  - (2) Robbery.
  - (3) Kidnapping.
  - (4) Forgery.
  - (5) Theft.
  - (6) Bribery.
  - (7) Gambling.
  - (8) Usury.
  - (9) Extortion.
  - (10) Unlawful delivery of controlled substances.
  - (11) Trafficking in explosives, weapons, or stolen property.
  - (12) Leading a criminal association.
  - (13) Obstructing or hindering criminal investigations or prosecutions.
  - (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
  - (15) Fraud.
  - (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
  - (17) Obscenity.
  - (18) Child pornography.
  - (19) Prostitution.
  - (20) Human trafficking.

<sup>79</sup> **SECTION 3. AMENDMENT.** Subdivisions a and e of subsection 1 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, labor trafficking in violation of section 1 of this Act, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, sex trafficking in violation of section 1 of this Act, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt to commit these offenses.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>79</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1041, chapter 137, section 1 of House Bill No. 1334, chapter 136, and section 2 of House Bill No. 1416, chapter 121.

# DEBTOR AND CREDITOR RELATIONSHIP

## CHAPTER 140

### SENATE BILL NO. 2105

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact sections 13-04.1-13, 13-05-10, 13-08-15, and 13-09-21 of the North Dakota Century Code, relating to enforcement actions for money brokers, collection agencies, deferred presentment service providers, and money transmitters; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-13. Penalty.** Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 2. AMENDMENT.** Section 13-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-10. Penalty.** Any person violating any of the provisions of this chapter is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 3. AMENDMENT.** Section 13-08-15 of the North Dakota Century Code is amended and reenacted as follows:

**13-08-15. Violations - Cease and desist orders - Penalties.** Except as otherwise provided in this chapter, any person who willfully provides deferred presentment services without a license is guilty of a class C felony and any person

who violates any other provisions of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the commissioner finds, whether without a hearing or after a hearing if a hearing is requested within twenty days of notice of an action by the commissioner under this section, that a person violated this chapter or any rule adopted to implement this chapter, the commissioner may do any one or more of the following:

1. Order the person to cease and desist violating this chapter or the rule.
2. Require the refund of any fees collected by the person in violation of this chapter.
3. Impose a civil penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 4. AMENDMENT.** Section 13-09-21 of the North Dakota Century Code is amended and reenacted as follows:

**13-09-21. Civil penalties.** The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 141****SENATE BILL NO. 2160**

(Finance and Taxation Committee)

(At the request of the Department of Financial Institutions)

AN ACT to create and enact two new sections to chapter 13-04.1 and chapter 13-10 of the North Dakota Century Code, relating to licensing of residential mortgage brokers and regulation of loans not in excess of one thousand dollars and automatic extension of money broker license; to amend and reenact subsections 1 and 3 of section 6-01-01.1, sections 13-04.1-02.1, 13-04.1-04, and 13-04.1-05, subsection 2 of section 41-09-11, and section 51-14-03.2 of the North Dakota Century Code, relating to changes necessitated by the repeal of chapter 13-03.1, the financial institutions regulatory fund balance, exemptions from licensing requirements under the North Dakota money broker statute, annual license fees, and licensure renewal dates; to repeal chapter 13-03.1 of the North Dakota Century Code, relating to regulation of lending activities; to provide a penalty; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 6-01-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, ~~13-03.1~~, 13-04.1, 13-05, 13-08, ~~and~~ 13-09, and 13-10.
3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium, excluding fees collected for use in the next succeeding biennium, may not exceed twenty percent of the department's next succeeding biennial budget.

**SECTION 2. AMENDMENT.** Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-02.1. Entities exempted from licensing requirements.** This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;

5. ~~North Dakota licensed consumer finance companies~~ Individuals licensed under chapter 13-10;
6. State or federal agencies and their employees;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed by the state of North Dakota;
10. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson; or
11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property.

**SECTION 3. AMENDMENT.** Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-04. Fee and bond to accompany application for money broker license.** The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~three~~ four hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund.

**SECTION 4. AMENDMENT.** Section 13-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-05. Expiration and renewal of license.** All licenses required herein expire on ~~June thirtieth~~ December thirty-first of each year and may be renewed. Renewals are effective the succeeding ~~July~~ January first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of

ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

**SECTION 5.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

**Maximum charges permitted for loans not in excess of one thousand dollars - Refund - Installment payments - Permitted charges.**

1. Every licensee may make loans under this section in any amount not exceeding one thousand dollars and may contract for, receive, or collect on the loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, a day is considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee under this chapter may also be calculated and charged on a stated dollar per hundred basis but the charges over the entire term of the loan may not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. If charges are calculated and charged on a dollar per hundred basis, the loan must be repayable in substantially equal periodic installments of principal and charges and the annual percentage simple interest equivalent must be conspicuously stated in the note or small loan contract executed in connection with the loan.
2. When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal, or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which must be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according to the payment schedules that had been agreed upon in the loan contract. Charges during the month of payment must be prorated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. No refund of one dollar or less need be made.
3. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect, and receive on any installment of principal and charges continuing unpaid for five or more days from the date the payment is due a sum that may not exceed the amount of charges during the final full month of the loan before maturity. The charge may not be collected more than once for the same default. The charge may be collected at

the time of the default or any time thereafter. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent installment, no charge may be made for the subsequent default.

4. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge that may not exceed one-twelfth of the charges authorized in subsection 1 applied to the balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges must be made over the remaining extended life of the loan in the same manner and at the same ratio as though no deferral or extension had been granted. The charges may be collected at the time of the deferment or any later time. If the loan is prepaid in full during the deferment period, the borrower is entitled to receive in addition to the refund required under subsection 2 a refund of that portion of the deferment charge applicable to any unexpired months of the deferment period.
5. A licensee may not enter into any contract of loan under this section under which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making the contract. Every loan contract must require payment of principal and charges in installments that must be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.
6. A licensee may not induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if the multiple loans result in a higher rate of charge than would otherwise be permitted by this chapter.
7. No further amount in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. However, this restriction does not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for by rule. If any sum in excess of the amounts authorized by this chapter is willfully charged, contracted for, or received, the licensee or any assignee or other person has no right to collect or receive any charges or recompense.

**SECTION 6.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

**Automatic six-month extension of license during 2009 calendar year.** All current licensees who have made payment of a fee in accordance with section 13-04.1-04 or 13-04.1-05, for a money broker license effective after July 1, 2008,

shall be granted an extension of their current licenses until December 31, 2009. If at any time prior to December 31, 2009, a licensee's license expires or otherwise terminates under this chapter, the applicant shall be required to pay licensing fees in accordance with section 13-04.1-04, and that license will expire on December 31, 2009.

**SECTION 7.** Chapter 13-10 of the North Dakota Century Code is created and enacted as follows:

**13-10-01. Purpose.** The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

**13-10-02. Definitions.** For purposes of this chapter:

1. "Depository institution" has the same meaning as is currently defined under section 3 of the Federal Deposit Insurance Act and includes any credit union.
2. "Federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.
3. "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
4. "Individual" means a natural person.
5. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.
  - a. For purposes of this subsection, "clerical or support duties" may include subsequent to the receipt of an application:
    - (1) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
    - (2) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
  - b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

6. "Mortgage loan originator":
  - a. Means an individual who for compensation or gain or in the expectation of compensation or gain:
    - (1) Takes a residential mortgage loan application; or
    - (2) Offers or negotiates terms of a residential mortgage loan;
  - b. Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in subsection 4 of section 13-10-03;
  - c. Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with North Dakota law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
  - d. Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).
7. "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.
8. "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.
9. "Person" means a natural person, corporation, company, limited liability company, partnership, or association.
10. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:
  - a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
  - b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
  - c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
  - d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
  - e. Offering to engage in any activity, or act in any capacity, described in this subsection.

11. "Registered mortgage loan originator" means any individual who:
  - a. Meets the definition of mortgage loan originator and is an employee of:
    - (1) A depository institution;
    - (2) A subsidiary that is:
      - (a) Owned and controlled by a depository institution; and
      - (b) Regulated by a federal banking agency; or
    - (3) An institution regulated by the farm credit administration; and
  - b. Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.
12. "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed such a dwelling.
13. "Residential real estate" means any real property located in North Dakota, upon which is constructed or intended to be constructed a dwelling.
14. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

### **13-10-03. License and registration required.**

1. An individual, unless specifically exempted from this chapter under subsection 3, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
2. To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection 1 is August 1, 2009, or such later date approved by the secretary of the United States department of housing and urban development, pursuant to the authority granted under Public Law 110-289, section 1508(a). All persons subject to licensing under this section, who are currently licensed under chapter 13-04.1, shall continue to be subject to licensure under chapter 13-04.1 until January 1, 2010, when they shall be required to be licensed under this chapter. If at any point before January 1, 2010, a person subject to licensing under this section fails to be licensed under chapter 13-04.1, that person shall be required to be licensed under this chapter.

3. The following are exempt from this chapter:
  - a. Registered mortgage loan originators, when acting for an entity described in subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
  - b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
  - c. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
  - d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
4. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
5. To implement an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

#### **13-10-04. State license and registration application and issuance.**

1. Applicants for a license shall apply in a form as prescribed by the commissioner. Each such form must contain content as set forth by rule, regulation, instruction, or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter.
2. To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.
3. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

- a. Fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and
- b. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain:
  - (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - (2) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 3, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.
5. For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 3, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

**13-10-05. Issuance of license.** The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
  - a. During the seven-year period preceding the date of the application for licensing and registration; or
  - b. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
  - c. Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.
3. a. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan



4. Prelicensing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.
5. The prelicensing education requirements approved by the nationwide mortgage licensing system and registry in subsection 1 for any state shall be accepted as credit toward completion of prelicensing education requirements in North Dakota.
6. A person previously licensed under this chapter after the effective date of this chapter applying to be licensed again must prove that that person has completed all of the continuing education requirements for the year in which the license was last held.

#### **13-10-07. Testing of loan originators.**

1. In order to meet the written test requirement referred to in subsection 5 of section 13-10-05, an individual must pass, in accordance with the standards established under this subsection, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.
2. A written test shall not be treated as a qualified written test for purposes of subsection 1 unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
  - a. Ethics;
  - b. Federal law and regulation pertaining to mortgage origination;
  - c. State law and regulation pertaining to mortgage origination; and
  - d. Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
3. Nothing in this section prohibits a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.
4.
  - a. An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.
  - b. An individual may retake a test three consecutive times, with each consecutive taking occurring at least thirty days after the preceding test.
  - c. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

- d. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which individual is a registered mortgage loan originator.

#### **13-10-08. Standards for license renewal.**

1. The minimum standards for license renewal for mortgage loan originators include the following:
  - a. The mortgage loan originator continues to meet the minimum standards for license issuance under section 13-10-05.
  - b. The mortgage loan originator has satisfied the annual continuing education requirements described in section 13-10-09.
  - c. The mortgage loan originator has paid all required fees for renewal of the license.
2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

#### **13-10-09. Continuing education for mortgage loan originators.**

1. To meet the annual continuing education requirements referred to in section 13-10-08, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection 2, which shall include at least:
  - a. Three hours of federal law and regulations;
  - b. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
  - c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
2. For purposes of subsection 1, continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.
3. Nothing in this section precludes any education course, as approved by the nationwide mortgage licensing system and registry, which is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.
4. Continuing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. For a licensed mortgage loan originator:

  - a. Except as allowed by subsection 2 of section 13-10-08 and subsection 9 of this section, an individual may only receive credit for a continuing education course in the year in which the course is taken; and
  - b. An individual may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.
7. A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry in subsection 1 for any state shall be accepted as credit toward completion of continuing education requirements in North Dakota.
8. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
9. A person meeting the requirements of subdivisions a and c of subsection 1 of section 13-10-08 may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

**13-10-10. Authority to require license.** In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. To carry out this requirement, the commissioner may participate in the nationwide mortgage licensing system and registry. For this purpose, the commissioner may establish by rule requirements as necessary, including:

1. Background checks for:

  - a. Criminal history through fingerprint or other databases;
  - b. Civil or administrative records;
  - c. Credit history; or
  - d. Any other information as deemed necessary by the nationwide mortgage licensing system and registry;

2. The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry;
3. The setting or resetting as necessary of renewal or reporting dates; and

4. Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the nationwide mortgage licensing system and registry.

**13-10-11. Nationwide mortgage licensing system and registry information challenge process.** The commissioner shall establish a process by which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the commissioner.

**13-10-12. Enforcement authorities, violations, and penalties.**

1. To ensure the effective supervision and enforcement of this chapter the commissioner may:
  - a. Deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.
  - b. Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 13-10-05 or 13-10-08, or withholds information or makes a material misstatement in an application for a license or renewal of a license.
  - c. Order restitution against persons subject to this chapter for violations of this chapter.
  - d. Impose fines on persons subject to this chapter pursuant to subsections 2, 3, and 4.
  - e. Issue orders or directives under this chapter as follows:
    - (1) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist.
    - (2) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist.
    - (3) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under subsection 5 of section 13-10-03 if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter.
    - (4) Order or direct such other affirmative action as the commissioner deems necessary.
2. The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any regulation prescribed

by the commissioner under this chapter or order issued under authority of this chapter.

3. The maximum amount of penalty for each act or omission described in subsection 2 is twenty-five thousand dollars.
4. Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

**13-10-13. Surety bond and minimum net worth requirements - Surety bond required.**

1. Each mortgage loan originator must be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of such person subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.
  - a. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection 2.
  - b. The surety bond must be in a form as prescribed by the commissioner.
  - c. The commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.
2. The licensee shall maintain a surety bond in the amount as determined by the commissioner by rule. The amount must be reflective of the dollar amount of loans originated as of the previous yearend. However, the commissioner may increase the amount of the surety bond if the commissioner determines that such an increase is necessary to protect the public interests.
3. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
4. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

**13-10-14. Minimum net worth required.** A minimum net worth must be continuously maintained for mortgage loan originators in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the net worth of such person subject to this chapter may be used in lieu of the mortgage loan originator's minimum net worth requirement.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars. However, the commissioner may increase the amount of minimum net worth if the commissioner determines that such an increase is necessary to protect the public interest.
2. The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this chapter.

**13-10-15. Confidentiality.** To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law or chapter 44-04 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 44-04.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the commissioner.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
  - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
  - b. Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
4. Application of chapter 44-04 relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1 shall be superseded by the requirements of this section.
5. This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

**13-10-16. Investigation and examination authority.** In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this

chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- a. Criminal, civil, and administrative history information, including nonconviction data;
  - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.
2. For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.
3. Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person subject to this chapter. The commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this chapter concerning their business.
4. Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
- a. Accounting compilations;
  - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
  - c. Such other information deemed necessary to carry out the purposes of this section.
5. In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no

individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

6. In order to carry out the purposes of this section, the commissioner may:
  - a. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
  - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
  - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
  - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
  - e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
7. The authority of this section remains in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
8. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

**13-10-17. Prohibited acts and practices.** It is a violation of this chapter for a person or individual subject to this chapter to:

1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
2. Engage in any unfair or deceptive practice toward any person;
3. Obtain property by fraud or misrepresentation;

4. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;
5. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
6. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
7. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations;
8. Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter;
9. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;
10. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency;
11. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
12. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
13. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or
14. Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

**13-10-18. Mortgage call reports.** Each mortgage licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

**13-10-19. Report to nationwide mortgage licensing system and registry.** Notwithstanding state privacy law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions contained in section 13-10-15.

**13-10-20. Privately insured credit unions.** Nonfederally insured credit unions which employ loan originators, as defined in Public Law 110-289, title V, the S.A.F.E. Act, shall register such employees with the nationwide mortgage licensing system and registry by furnishing the information concerning the employees' identity set forth in section 1507(a)(2) of Public Law 110-289, title V.

**13-10-21. Unique identifier shown.** The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the commissioner.

**SECTION 8. AMENDMENT.** Subsection 2 of section 41-09-11 of the North Dakota Century Code is amended and reenacted as follows:

2. A transaction, although subject to this chapter, is also subject to section 47-19-41 and chapters ~~13-03-4~~ 13-04.1, 35-05, 49-09, and 51-13. In the case of conflict between this chapter and any of those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect that is specified therein.

**SECTION 9. AMENDMENT.** Section 51-14-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**51-14-03.2. Application of other provisions.** Credit extended by a seller or holder of a revolving charge agreement to a buyer is not subject to chapter ~~13-03-4~~ 13-04.1 or 47-14.

**SECTION 10. REPEAL.** Chapter 13-03.1 of the North Dakota Century Code is repealed.

**SECTION 11. EFFECTIVE DATE.** Sections 1 and 6 of this Act become effective immediately upon filing with the secretary of state and all other sections of this Act become effective on August 1, 2009.

**SECTION 12. EMERGENCY.** Sections 1 and 6 of this Act are declared to be an emergency measure.

Approved April 9, 2009

Filed April 13, 2009

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 142

### HOUSE BILL NO. 1445

(Representatives Damschen, Heller, Hunskor, L. Meier)  
(Senators Christmann, Klein)

AN ACT to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to the requirements of informed consent to abortion.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-02. Definitions.** As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed, other than a hospital.
3. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
4. "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
5. "Infant born alive" or "live born child" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
6. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed provided that:
  - a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
    - (1) The name of the physician who will perform the abortion;
    - (2) The abortion will terminate the life of a whole, separate, unique, living human being;



9. 10. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 143****SENATE BILL NO. 2265**

(Senators Wanzek, Erbele, Mathern)  
(Representatives J. Kelsh, S. Kelsh, L. Meier)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to required notice to be posted at abortion facilities.

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

**SECTION 1.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

**Required notice at abortion facility.**

1. Any abortion facility that performs abortions shall display signs that contain exclusively the following words: "NOTICE: No one can force you to have an abortion. It is against the law for a spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in any way force you to have an abortion."
2. The signs must be located so that the signs can be read easily and in areas that ensure maximum visibility to women at the time a woman gives consent to an abortion.
3. The display of signs pursuant to this section does not discharge any other legal duty of an abortion facility or physician.
4. The state department of health shall make the signs required by this section available for download in a printable format on its internet website.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 144

### HOUSE BILL NO. 1371

(Representatives Grande, Dahl, Kerzman)  
(Senators Erbele, Krauter, Wanzek)

AN ACT to amend and reenact sections 14-02.1-04 and 14-02.1-07 of the North Dakota Century Code, relating to limitations on the performance of abortion and abortion reporting requirements.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-02.1-04. Limitations on the performance of abortions - Penalty.**

1. No abortion may be done by any person other than a licensed physician using medical standards applicable to all other surgical procedures.
2. After the first twelve weeks of pregnancy but prior to the time at which the fetus may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.
3. After the point in pregnancy when the fetus may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by the physician in writing, setting forth in detail the facts upon which the physician relies in making this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency when the abortion is necessary to preserve the life of the patient.

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility or another facility an active ultrasound of her fetus. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the fetus, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the fetus. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer,

including the date and time of the offer and the woman's signature attesting to her informed decision.

5. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
- ~~5-~~ 6. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

**SECTION 2. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-07. Records required - Reporting of practice of abortion.**

1. Records:
  - a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion reports, and complication reports. All abortion facilities shall keep records of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their fetuses pursuant to section 14-02.1-04, and the number who did not; and of each of those numbers, the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.
  - b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein must remain confidential and may be used by the state department of health only for gathering statistical data and ensuring compliance with the provisions of this chapter.
2. Reporting:
  - a. An individual abortion report for each abortion performed upon a woman must be completed by her attending physician. The report must be confidential and may not contain the name of the woman. This reporting must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.
  - b. All abortion reports must be signed by the attending physician and submitted to the state department of health within thirty days from the date of the abortion. All complication reports must be signed by the physician providing the post-abortion care and submitted to the state department of health within thirty days from the date of the post-abortion care.
  - c. A copy of the abortion report must be made a part of the medical record of the patient at the facility or hospital in which the abortion

was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the state department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.

- d. The state department of health is responsible for collecting all abortion reports and complication reports and collating and evaluating all data gathered therefrom and shall annually publish a statistical report based on data from abortions performed in the previous calendar year.
- e. The state department of health shall report to the attorney general any apparent violation of this chapter.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 145****SENATE BILL NO. 2143**

(Political Subdivisions Committee)

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

AN ACT to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to the administrative adjudication of discriminatory practices.

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

**SECTION 1. AMENDMENT.** Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-19. Actions - Limitations.**

1. Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.
2. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or, except as limited by this section, may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing.
3. If Except as otherwise limited by this section, if a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is ninety days from the date the department dismisses the complaint or issues a written probable cause determination.
4. If a person elects to bring an action in the district court under this chapter, any ~~pending~~ administrative action pending before the department based upon the same discriminatory acts must be dismissed immediately.
5. A person whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for discriminatory acts is available must exercise that process to completion before commencing an action under this section, and if that process provides for judicial review by statutory appeal or through special proceedings, then that process must be followed to completion. The

period of limitation for bringing an action in the district court if there is no statutory appeal is ninety days from the date the available process is completed or if a complaint is filed with the department, ninety days from the date the department dismisses a complaint or issues a written probable cause determination, whichever is greater. In those cases when there is no statutory appeal, a request for an administrative hearing under section 14-02.4-23 must be made within twenty days from the date the department dismisses a complaint or issues a probable cause determination, but no administrative hearing may be held until any available internal process is completed. A person found to have been subjected to a discriminatory act through an administrative process may apply to the district court for an award of reasonable attorney's fees and costs. Nothing in this subsection limits the ability of the department to receive and investigate complaints of discrimination and engage in informal conciliation.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 146****HOUSE BILL NO. 1252**

(Representatives Mueller, Dahl, Delmore, Hawken)  
(Senators Heckaman, Nelson)

AN ACT to create and enact section 14-03-20.2 of the North Dakota Century Code, relating to middle name options.

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

**SECTION 1.** Section 14-03-20.2 of the North Dakota Century Code is created and enacted as follows:

**14-03-20.2. Middle name options.**

1. One party or both parties to a marriage may elect to change the middle name by which that individual wishes to be known after the solemnization of the marriage by entering the new middle name in the space provided on the marriage license application. If an individual elects to change that individual's middle name, the middle name entry on the marriage license application or marriage license must consist of the premarriage surname or former surname of that individual.
2. Compliance with the middle name provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 147****HOUSE BILL NO. 1291**

(Representatives Delmore, Dahl, DeKrey, S. Meyer)  
(Senators Lyson, Schneider)

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the use of electronic monitoring as a condition of release for certain individuals.

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

**SECTION 1.** A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

**Release conditions.** If an individual charged with or arrested for a crime involving domestic violence, including a violation of a domestic violence protection order under section 14-07.1-03 or an order prohibiting contact under section 14-07.1-13, is released from custody, a district or municipal court may require that electronic home detention or global positioning system monitoring be used for the individual as a condition of release.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 148****HOUSE BILL NO. 1329**  
(Representatives Weisz, Bellew, DeKrey)  
(Senator Klein)

AN ACT to create and enact a new subsection to section 14-09-09.3 of the North Dakota Century Code, relating to the duties and liabilities of an income payer; to amend and reenact section 14-09-09.7 of the North Dakota Century Code, relating to the child support guidelines; and to provide an agency directive.

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

<sup>80</sup> **SECTION 1.** A new subsection to section 14-09-09.3 of the North Dakota Century Code is created and enacted as follows:

If an income payer makes an error in the remittal information the income payer provides to the state disbursement unit, the income payer has not complied with this section and is responsible for the error, but has a cause of action for reimbursement against any person that receives funds from the disbursement unit as a result of the error and refuses to return the funds upon request.

<sup>81</sup> **SECTION 2. AMENDMENT.** Section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.7. Child support guidelines.**

1. The department of human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
  - a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
    - (1) That benefit may be liquidated; and
    - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.
  - b. Authorize an expense deduction for determining net income.

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<sup>80</sup> Section 14-09-09.3 was also amended by section 2 of House Bill No. 1175, chapter 419.

<sup>81</sup> Section 14-09-09.7 was also amended by section 97 of House Bill No. 1436, chapter 482.

- c. Designate other available resources to be considered.
        - d. Specify the circumstances that should be considered in reducing support contributions on the basis of hardship.
        - e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.
        - f. ~~Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.~~
        - g. Authorize a rebuttal of the presumption provided in subsection 3 4 based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.
      - ~~h.~~ g. Include consideration of an obligated party's responsibility for health insurance coverage or other medical support under section 14-09-08.10.
2. The guidelines may not take into consideration cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.
3. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
- 3- 4. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the child support agency which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
  - a. State the child support amount determined through application of the guidelines;
  - b. Identify the criteria that rebut the presumption of correctness of that amount; and
  - c. State the child support amount determined after application of the criteria that rebut the presumption.
- 4- 5. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking

proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

- 5- 6. The guidelines established under this section may include a separate amount of child support for the child's health insurance coverage, reimbursement for public health coverage provided under chapter 50-29, and other medical support.

**SECTION 3. ADMINISTRATIVE RULEMAKING - ADDITIONAL REBUTTAL CRITERIA.** As part of the first rulemaking commenced under section 14-09-09.7 after the effective date of this Act, the Department of Human Services shall adopt new criteria for rebutting the presumptively correct amount of support determined under the child support guidelines based on the increased ability of an obligor, whose income is decreased based on depreciation, to provide child support.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 149****SENATE BILL NO. 2042**

(Legislative Council)  
(Judicial Process Committee)

AN ACT to create and enact six new sections to chapter 14-09 and chapter 14-09.2 of the North Dakota Century Code, relating to parental rights and responsibilities and to parenting coordinators; to amend and reenact sections 14-05-22, 14-05-23, 14-09-05.1, 14-09-06.2, 14-09-06.3, 14-09-06.4, 14-09-06.6, and 14-09-07 of the North Dakota Century Code, relating to parental rights and responsibilities; to repeal sections 14-09-04, 14-09-05, 14-09-06, 14-09-06.1, and 14-09-28 of the North Dakota Century Code, relating to child custody and parental custody and visitation rights and duties; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 14-05-22 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-22. Custody of children - Visitation Parental rights and responsibilities - Costs.**

1. In an action for divorce, the court, before or after judgment, may give ~~such direction for the custody, care, and education~~ parenting rights and responsibilities of the children of the marriage ~~as may seem necessary or proper~~; and may vacate or modify the same at any time. Any award or change of ~~custody~~ primary parental responsibilities must be made in accordance with the provisions of chapter 14-09.
2. After making an award of ~~custody~~ primary residential responsibility, the court ~~shall, upon request of the noncustodial other parent, shall grant such rights of visitation parenting time as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is such rights of parenting time are likely to endanger the child's physical or emotional health.~~
3. If the court finds that a parent has perpetrated domestic violence and that parent ~~does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding; the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.~~
4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers; and that supervised visitation is in the child's best interest.

Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.

5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

**SECTION 2. AMENDMENT.** Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-23. Temporary support, attorney's fees, and custody parental rights and responsibilities.** During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney's fees. The court in the order may ~~award custody of minor children to a party~~ make an order concerning parental rights and responsibilities concerning the children of the parties. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

**SECTION 3. AMENDMENT.** Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-05.1. Grandparental rights of visitation to unmarried ~~minors~~ minor child - Mediation or arbitration.**

1. The grandparents and great-grandparents of an unmarried minor child may be granted reasonable visitation rights to the ~~minor child~~ child by the district court upon a finding that visitation would be in the best interests of the ~~minor child~~ child and would not interfere with the parent-child relationship.
2. The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the ~~minor child~~ child and the ~~minor's~~ child's parents.
3. This section does not apply to agency adoptions or when the ~~minor child~~ child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the ~~minor child~~ child may be terminated upon the adoption if termination of the rights is in the best interest of the ~~minor child~~ child.
4. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving

the parent of the minor child. If any district court of this state retains jurisdiction over the custodial residential placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the custodial parent having primary residential responsibility as a civil action and venued in the county of residence of the minor child.

5. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

**SECTION 4.** Five new sections to chapter 14-09 of the North Dakota Century Code are created and enacted as follows:

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

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
3. "Parenting plan" means a written plan describing each parent's rights and responsibilities.
4. "Parenting schedule" means the schedule of when the child is in the care of each parent.
5. "Parenting time" means the time when the child is to be in the care of a parent.
6. "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
7. "Residential responsibility" means a parent's responsibility to provide a home for the child.

**Parental rights and responsibilities - Best interests and welfare of child.**

1. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.
2. If the court finds that a parent has perpetrated domestic violence and that parent does not have residential responsibility, and there exists one

incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised parenting time with that parent unless there is a showing by clear and convincing evidence that unsupervised parenting time would not endanger the child's physical or emotional health.

3. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers and that supervised parenting time is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that contact serves a therapeutic purpose and is in the best interests of the child.
4. In any proceeding dealing with parental rights and responsibilities in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

### **Parenting plans - Contents.**

1. In any proceeding to establish or modify a judgment providing for parenting time with a child, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to agree on a parenting plan, the court shall issue a parenting plan considering the best interests of the child.
2. A parenting plan must include, at a minimum, provisions regarding the following or an explanation as to why a provision is not included:
  - a. Decisionmaking responsibility relative to:
    - (1) Routine or day-to-day decisions; and
    - (2) Major decisions such as education, health care, and spiritual development;
  - b. Information sharing and access, including telephone and electronic access;
  - c. Legal residence of a child for school attendance;
  - d. Residential responsibility, parenting time, and parenting schedule, including;

- (1) Holidays and days off from school, birthday, and vacation planning;
  - (2) Weekends and weekdays; and
  - (3) Summers;
- e. Transportation and exchange of the child, considering the safety of the parties;
  - f. Procedure for review and adjustment of the plan; and
  - g. Methods for resolving disputes.

**Decisionmaking responsibility.** Except as provided in subsection 3, in the making of any order relative to decisionmaking responsibility:

1. If the parents have reached an agreement as to decisionmaking responsibility, the court shall accept the agreement unless the court makes written findings that the agreement is not in the best interests of the child.
2. If the parents cannot agree on an allocation of decisionmaking responsibility, the court shall enter an order allocating decisionmaking responsibility in the best interests of the child.
3. An allocation of decisionmaking responsibility is not in the best interests of the child unless the order includes a method of resolving disputes when parents do not agree on an issue.
4. If the court finds that domestic violence as defined in section 14-07.1-01 has occurred, the court shall consider such domestic violence in determining whether joint decisionmaking responsibility is in the best interests of the child. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the child, the parent, or both. If joint decisionmaking responsibility is granted, even though there is evidence of domestic violence, the court shall provide written findings to support the order.

**Parental rights and responsibilities.**

1. Each parent of a child has the following rights and responsibilities:
  - a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
  - b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
  - c. Right to reasonable access to the child by written, telephonic, and electronic means.
  - d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives

health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.

- e. Duty to immediately inform the other parent of residential telephone numbers and address, and any changes to the same.
  - f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying parental rights and responsibilities the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

**SECTION 5. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 1. For the purpose of ~~custody~~ parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
  - a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
  - b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
  - c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.
  - d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in a ~~stable satisfactory environment~~ each parent's home, and the desirability of maintaining continuity in the child's home and community.
  - e. The permanence, as a family unit, of the existing or proposed ~~custodial home~~ willingness and ability of each parent to facilitate

and encourage a close and continuing relationship between the other parent and the child.

- f. The moral fitness of the parents, as that fitness impacts the child.
- g. The mental and physical health of the parents, as that health impacts the child.
- h. The home, school, and community record of the child and the potential effect of any change.
- i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
- j. Evidence of domestic violence. In awarding custody or granting rights of visitation determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent have residential responsibility. The court shall cite specific findings of fact to show that the custody or visitation arrangement residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
- k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict,

physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

- l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
  - m. Any other factors considered by the court to be relevant to a particular ~~child custody~~ parental rights and responsibilities dispute.
2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

**SECTION 6. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.3. Custody investigations and reports - Costs.**

1. In contested ~~custody~~ proceedings dealing with parental rights and responsibilities the court ~~may~~, upon the request of either party, or, upon its own motion, may order an investigation and report concerning ~~custodial arrangements for parenting rights and responsibilities~~ regarding the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential ~~custody~~ arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

**SECTION 7. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings**

**involving parental rights and responsibilities - Immunity.** In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor ~~children~~ child, and in any action when the ~~custody or visitation of children~~ parenting rights and responsibilities concerning the child is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the ~~children~~ child concerning ~~custody, support, and visitation~~ parenting rights and responsibilities. The court, ~~in its discretion~~, may appoint a guardian ad litem or ~~child custody~~ investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the ~~children's~~ child's best interests. If appointed, the ~~child custody~~ investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or ~~child custody~~ investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county of ~~venue where the child resided at the time the action was commenced~~. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or ~~child custody~~ investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or ~~child custody~~ investigator is a disputable presumption.

**SECTION 8. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.6. Limitations on postjudgment custody modifications of primary residential responsibility.**

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify a custody order primary residential responsibility may be made earlier than two years after the date of entry of an order establishing custody primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
  - a. The persistent and willful denial or interference with visitation parenting time;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The primary ~~physical care of~~ residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds

the moving party has established a prima facie case justifying a modification. ~~If a prima facie case is established, the~~ The court shall set a date for an evidentiary hearing only if a prima facie case is established.

5. The court may not modify a ~~prior custody order~~ the primary residential responsibility within the two-year period following the date of entry of an order establishing ~~custody~~ primary residential responsibility unless the court finds the modification is necessary to serve the best interest of the child and:
  - a. The persistent and willful denial or interference with ~~visitation~~ parenting time;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The ~~primary physical care of~~ residential responsibility for the child has changed to the other parent for longer than six months.
6. The court may modify a ~~prior custody order~~ the primary residential responsibility after the two-year period following the date of entry of an order establishing ~~custody~~ primary residential responsibility if the court finds:
  - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
  - b. The modification is necessary to serve the best interest of the child.
7. The court may modify a prior ~~custody~~ order concerning primary residential responsibility at any time if the court finds a stipulated agreement by the parties to modify the ~~custody~~ order is in the best interest of the child.
8. Upon a motion to modify ~~custody~~ primary residential responsibility under this section, the burden of proof is on the moving party.
9. If a motion for change of ~~custody~~ primary parental responsibility is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary ~~custody~~ order that concerning residential responsibility which is in the best interest of the child. The temporary ~~custody~~ order must explicitly provide that ~~custody~~ residential responsibility must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of ~~custody~~ residential responsibility would not be in the best interest of the child. If an original ~~custody~~ decision concerning primary residential responsibility is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent ~~custody~~ order until the return of the service member from active duty.

The court may issue a temporary ~~custody~~ order concerning primary residential responsibility in the best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification of ~~custody~~ that continues past discharge or release from active duty service or to agreeing to a permanent ~~custody~~ order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.

**SECTION 9. AMENDMENT.** Section 14-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-07. Residence of child.**

1. A parent ~~entitled to the custody of~~ with primary residential responsibility for a child may not change the primary residence of the child to another state except upon order of the court or with the consent of the ~~noncustodial other~~ parent, if the ~~noncustodial other~~ parent has been given ~~visitation rights~~ parenting time by the decree.
2. A parent with equal residential responsibility for a child may not change the residence of the child to another state except with consent of the other parent or order of the court allowing the move and awarding that parent primary residential responsibility.
3. A court order is not required if the ~~noncustodial other~~ parent:
  1. a. Has not exercised ~~visitation rights~~ parenting time for a period of one year; or
  2. b. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the ~~custodial~~ parent with primary residential responsibility.

**SECTION 10.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

**References to child custody and custodial parent.** Any law that refers to the "custody" of a child means the allocation of parental rights and responsibilities as provided in this chapter. Any law that refers to a "custodial parent" or "primary residential responsibility" means a parent with more than fifty percent of the residential responsibility and any reference to a noncustodial parent means a parent with less than fifty percent of the residential responsibility.

**SECTION 11.** Chapter 14-09.2 of the North Dakota Century Code is created and enacted as follows:

**14-09.2-01. Parenting coordinator - Definition.** A parenting coordinator is a neutral individual authorized to use any dispute resolution process to resolve parenting time disputes. The purpose of a parenting coordinator is to resolve parenting time disputes by interpreting, clarifying, and addressing circumstances not specifically addressed by an existing court order. A parenting coordinator:

1. May assess for the parties whether there has been a violation of an existing court order and, if so, recommend further court proceedings.
2. May be appointed to resolve a one-time parenting time dispute or to provide ongoing parenting time dispute resolution services. Parenting time dispute also means a visitation dispute under existing orders.
3. Shall attempt to resolve a parenting time dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, shall make a decision resolving the dispute.

**14-09.2-02. Appointment of parenting coordinator.** In any action for divorce, legal separation, paternity, or guardianship in which children are involved, the court, upon its own motion or by motion or agreement of the parties, may appoint a parenting coordinator to assist the parties in resolving issues or disputes related to parenting time. A party, at any time before the appointment of a parenting coordinator, may file a written objection to the appointment on the basis of domestic violence having been committed by another party against the objecting party or a child who is a subject of the action. After the objection is filed, a parenting coordinator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting coordinator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of all parties and children.

**14-09.2-03. Qualifications.** The supreme court shall establish qualifications and maintain and make available to the public a roster of individuals eligible to serve as a parenting coordinator. The roster must include each individual's name, address, and telephone number.

**14-09.2-04. Agreement or decision binding.** Within five days of notice of the appointment, or within five days of notice of a subsequent parenting time dispute between the same parties, the parenting coordinator shall meet with the parties together or separately and shall make a diligent effort to facilitate an agreement to resolve the dispute. The parenting coordinator may confer with the parties through a telephone conference or other means. A parenting coordinator may make a decision without conferring with a party if the parenting coordinator makes a good-faith effort to confer with the party. If the parties do not reach an agreement, the parenting coordinator shall make a decision resolving the dispute as soon as possible but not later than five days after receiving all of the information necessary to make a decision and after the final meeting or conference with the parties. The parenting coordinator shall put the agreement or decision in writing and provide a copy to the parties. An agreement of the parties or a decision of the parenting coordinator is binding on the parties until further order of the court.

**14-09.2-05. Fees.** Before the appointment of the parenting coordinator, the court shall give the parties notice that the fees of the parenting coordinator will be apportioned between the parties. In its order appointing the parenting coordinator, the court shall apportion the fees of the parenting coordinator between the parties, with each party bearing the portion of the fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a parenting time dispute and there is not a court order that provides for apportionment of the fees of a parenting coordinator, the court may require the party requesting the appointment of a parenting coordinator to pay the fees of the coordinator in advance. Neither party may be required to submit a dispute to a parenting coordinator if the

party cannot afford to pay the fees of a parenting coordinator or an affordable coordinator is not available, unless the other party agrees to pay the fees. After the fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. Notwithstanding the provisions of section 14-09.2-06, the court may consider information from the parenting coordinator in determining bad faith.

**14-09.2-06. Confidentiality.** Statements made and documents produced as part of the parenting coordinator process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment. Parenting coordinators and lawyers for the parties, to the extent of their participation in the parenting coordinator process, may not be subpoenaed or called as witnesses in court proceedings. Notes, records, and recollections of parenting coordinators are confidential and may not be disclosed unless:

1. The parties and the parenting coordinator agree in writing to the disclosure; or
2. Disclosure is required by law or other applicable professional codes. Notes and records of parenting coordinators may not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Unless the court determines that the notes and records contain information regarding acts that may be a violation of a state or federal criminal law, the notes and records may not be released.

**14-09.2-07. Immunity.** A parenting coordinator is immune from civil liability for damages for acts or omissions of ordinary negligence arising out of that individual's duties and responsibilities as a parenting coordinator.

**14-09.2-08. Modification or termination of appointment.** The court may terminate or modify the parenting coordinator appointment upon agreement of the parties, upon motion of either party, at the request of the parenting coordinator, or by the court on its own motion for good cause shown. Good cause includes:

1. Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the parenting coordinator;
2. A determination that the parties no longer need the assistance of a parenting coordinator;
3. Impairment on the part of a party that significantly interferes with the party's participation in the process; or
4. The parenting coordinator is unwilling or unable to serve.

**SECTION 12. REPEAL.** Sections 14-09-04, 14-09-05, 14-09-06, 14-09-06.1, and 14-09-28 of the North Dakota Century Code are repealed.

**SECTION 13. LEGISLATIVE INTENT - FUNDING.** It is the intent of the sixty-first legislative assembly that the parenting coordinator program provided for in section 11 of this Act be self-sustaining and not receive any funding from the general fund after the 2009-11 biennium.

**SECTION 14. EXPIRATION DATE.** Section 11 of this Act is effective through June 30, 2013, and after that date is ineffective.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 150****SENATE BILL NO. 2157**

(Senators J. Lee, Nelson)

(Representatives Hawken, Nathe, Metcalf, Rust)

AN ACT to create and enact a new section to chapter 14-10 of the North Dakota Century Code, relating to voluntary blood donation by minors.

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

**SECTION 1.** A new section to chapter 14-10 of the North Dakota Century Code is created and enacted as follows:

**Blood donation - Minors.** An individual who is at least sixteen years of age may donate blood on a voluntary and noncompensatory basis without obtaining the consent of the individual's parent or guardian. Any notification of a medical condition must be mailed to the donor and the donor's parent or guardian.

Approved April 22, 2009

Filed April 23, 2009

## CHAPTER 151

### SENATE BILL NO. 2394 (Senators Krebsbach, Erbele, Warner) (Representatives Dahl, Metcalf)

AN ACT to create and enact a new section to chapter 14-10 of the North Dakota Century Code, relating to consent for prenatal care and other pregnancy care services provided to minors; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 14-10 of the North Dakota Century Code is created and enacted as follows:

#### **Minor's consent for prenatal care and other pregnancy care services.**

1.
  - a. A physician or other health care provider may provide pregnancy testing and pain management related to pregnancy to a minor without the consent of a parent or guardian.
  - b. A physician or other health care provider may provide prenatal care to a pregnant minor in the first trimester of pregnancy or may provide a single prenatal care visit in the second or third trimester of pregnancy without the consent of a parent or guardian.
  - c. A physician or other health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the physician or other health care provider is unable to contact the minor's parent or guardian.
  - d. The costs incurred by the physician or other health care provider for performing services under this section may not be submitted to a third-party payer without the consent of the minor's parent or guardian.
  - e. This section does not authorize a minor to consent to abortion or otherwise supersede the requirements of chapter 14-02.1.
2. If a minor requests confidential services pursuant to subsection 1, the physician or other health care professional shall encourage the minor to involve her parents or guardian. Notwithstanding subsection 1, a physician or other health care professional or a health care facility may not be compelled against their best judgment to treat a minor based on the minor's own consent.
3. A physician or other health care professional who, pursuant to subsection 1, provides pregnancy care services to a minor may inform the parent or guardian of the minor of any pregnancy care services given or needed if the physician or other health care professional discusses with the minor the reasons for informing the parent or

guardian prior to the disclosure and, in the judgment of the physician or other health care professional:

- a. Failure to inform the parent or guardian would seriously jeopardize the health of the minor or her unborn child;
- b. Surgery or hospitalization is needed; or
- c. Informing the parent or guardian would benefit the health of the minor or her unborn child.

**SECTION 2. SERVICES FOR PREGNANT MINORS - LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying existing services for minors who are pregnant and whether additional education and social services would enhance the potential for a healthy child and a positive outcome for the minor. The study must consider the potential benefits of support services for parents of these minors and guardianship for the minor for cases in which parental abuse or neglect may be an issue. The study must also consider the benefits to the minor of subsidies for open adoptions and supportive housing and child care for single parents enrolled in secondary and postsecondary educational institutions. The study must also determine the most desirable evidence-based service delivery system and the amount and sources of adequate funding. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 152

### SENATE BILL NO. 2072

(Human Services Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 14-12.2-03.1, 14-12.2-12.1, 14-12.2-12.2, 14-12.2-32.1, 14-12.2-46.3, 14-12.2-46.4, 14-12.2-47.1, 14-12.2-47.2, 14-12.2-47.3, 14-12.2-47.4, 14-12.2-47.5, 14-12.2-47.6, 14-12.2-47.7, 14-12.2-47.8, 14-12.2-47.9, 14-12.2-47.10, 14-12.2-47.11, 14-12.2-47.12, and 14-12.2-47.13 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to amend and reenact sections 14-12.2-01, 14-12.2-02, 14-12.2-03, 14-12.2-04, 14-12.2-05, 14-12.2-06, 14-12.2-07, 14-12.2-08, 14-12.2-09, 14-12.2-10, 14-12.2-11, 14-12.2-12, 14-12.2-13, 14-12.2-14, 14-12.2-15, 14-12.2-16, 14-12.2-17, 14-12.2-18, 14-12.2-19, 14-12.2-20, 14-12.2-22, 14-12.2-23, 14-12.2-24, 14-12.2-25, 14-12.2-26, 14-12.2-28, 14-12.2-29, 14-12.2-30, 14-12.2-31, 14-12.2-32, 14-12.2-33, 14-12.2-33.1, 14-12.2-33.2, 14-12.2-33.3, 14-12.2-33.4, 14-12.2-33.5, 14-12.2-34, 14-12.2-35, 14-12.2-36, 14-12.2-37, 14-12.2-38, 14-12.2-39, 14-12.2-40, 14-12.2-41, 14-12.2-43, 14-12.2-44, 14-12.2-45, 14-12.2-46, 14-12.2-46.1, 14-12.2-48, and 14-12.2-49 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to repeal section 14-12.2-47 of the North Dakota Century Code, relating to proceedings to determine parentage; to provide for application; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-12.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-01. (~~404~~ 102) Definitions.** As used in this chapter:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.
3. "Convention" means the convention on the international recovery of child support and other forms of family maintenance, concluded at The Hague on November 23, 2007.
4. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
5. "Foreign country" means a country, including a political subdivision thereof, other than the United States, that under its law authorizes the issuance of support orders and:

- a. Which has been declared under the law of the United States to be a foreign reciprocating country;
  - b. Which has established a reciprocal arrangement for child support with this state as provided in section 14-12.2-20;
  - c. Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or
  - d. In which the convention is in force with respect to the United States.
6. "Foreign support order" means a support order of a foreign tribunal.
7. "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority in a proceeding subject to sections 14-12.2-47.1 through 14-12.2-47.13, which may be a judicial or administrative authority in a proceeding in a foreign country.
- 4- 8. "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month period or other period.
- 5- 9. "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
- 6- 10. "Income-withholding order" means an order or other legal process directed to an obligor's employer or income payer, as defined by section 14-09-09.10, to withhold support from the income of the obligor.
- 7- "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- 8- 11. "Initiating tribunal" means the authorized tribunal in an initiating state of a state or foreign country from which a proceeding is forwarded or in which a proceeding is filed for forwarding to another state or foreign country.
12. "Issuing foreign country" means the country in which a tribunal issues a support order or judgment determining parentage.
- 9- 13. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

40. 14. "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or ~~renders~~ a judgment determining parentage of a child.
44. 15. "Law" includes decisional and statutory law and rules having the force of law.
42. 16. "Obligee" means:
- a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been ~~rendered~~ issued;
  - b. A state ~~or, a~~ political subdivision of a state, or a foreign country, to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support; ~~or~~
  - c. An individual seeking a judgment determining parentage of the individual's child; or
  - d. A person that is a creditor in a proceeding subject to sections 14-12.2-47.1 through 14-12.2-47.13.
43. 17. "Obligor" means an individual, or the estate of a decedent:
- a. Who owes or is alleged to owe a duty of support;
  - b. Who is alleged but has not been adjudicated to be a parent of a child; ~~or~~
  - c. Who is liable under a support order; or
  - d. Who is a debtor in a proceeding subject to sections 14-12.2-47.1 through 14-12.2-47.13.
18. "Outside this state" means a location in another state or a country other than the United States, whether or not the country is defined as a foreign country.
19. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
44. 21. "Register" means to file in a tribunal of this state a support order or judgment determining parentage ~~in the registry of foreign support orders~~ issued in another state or foreign country.
45. 22. "Registering tribunal" means a tribunal in which a support order or judgment determining parentage is registered.

46. 23. "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from ~~an initiating another state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act~~ or foreign country.
47. 24. "Responding tribunal" means the authorized tribunal in a responding state or foreign country.
48. 25. "Spousal support order" means a support order for a spouse or former spouse of the obligor.
49. 26. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:
- a. ~~An~~ an Indian nation or tribe; and
  - b. ~~A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.~~
20. 27. "Support enforcement agency" means a public official or agency authorized to ~~seek:~~
- a. ~~Enforcement~~ Seek enforcement of support orders or laws relating to the duty of support;
  - b. ~~Establishment~~ Seek establishment or modification of child support;
  - c. ~~Determination~~ Request determination of parentage of a child; or
  - d. ~~To~~ Attempt to locate obligors or their assets; or
  - e. Request determination of the controlling child support order.
24. 28. "Support order" means a judgment, decree, ~~or~~ order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement; and for financial assistance provided to an individual obligee in place of child support. The support order may include related costs and fees, interest, income withholding, automatic adjustment, attorney's fees, and other relief.
22. 29. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
30. "United States" means all states.

**SECTION 2. AMENDMENT.** Section 14-12.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-02. (~~402~~ 103) Tribunal of this state State tribunal and support enforcement agency.**

1. The district court is the tribunal of this state.
2. The department of human services is the support enforcement agency of this state.

**SECTION 3. AMENDMENT.** Section 14-12.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-03. (~~403~~ 104) Remedies cumulative.**

1. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a support order on the basis of comity.
2. This chapter does not:
  - a. Provide the exclusive method of establishing or enforcing a support order under the law of this state; or
  - b. Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

**SECTION 4.** Section 14-12.2-03.1 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-03.1. (105) Application of chapter to resident of foreign country and foreign support proceeding.**

1. A tribunal of this state shall apply sections 14-12.2-01 through 14-12.2-46.4 and, as applicable, sections 14-12.2-47.1 through 14-12.2-47.13, to a support proceeding involving:
  - a. A foreign support order;
  - b. A foreign tribunal; or
  - c. An obligee, obligor, or child residing in a foreign country.
2. A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of sections 14-12.2-01 through 14-12.2-46.4.
3. Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding subject to the convention. In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 5. AMENDMENT.** Section 14-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-04. (201) Bases for jurisdiction over nonresident.**

1. In a proceeding to establish, or enforce, or ~~or modify~~ a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
  - 1- a. The individual is personally served with a summons within this state;
  - 2- b. The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - 3- c. The individual resided with the child in this state;
  - 4- d. The individual resided in this state and provided prenatal expenses or support for the child;
  - 5- e. The child resides in this state as a result of the acts or directives of the individual;
  - 6- f. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
  - 7- g. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
2. The bases of personal jurisdiction set forth in subsection 1 or any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 14-12.2-45 are met, or, in the case of a foreign support order, unless the requirements of section 14-12.2-46.3 are met.

**SECTION 6. AMENDMENT.** Section 14-12.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-05. (202) Procedure when exercising jurisdiction over nonresident Duration of personal jurisdiction.** A tribunal of this state exercising personal jurisdiction over a nonresident under section 14-12.2-04 may apply section 14-12.2-28 to receive evidence from another state and section 14-12.2-30 to obtain discovery through a tribunal of another state. In all other respects, sections 14-12.2-13 through 14-12.2-47 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter. Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 14-12.2-08, 14-12.2-09, and 14-12.2-12.2.

**SECTION 7. AMENDMENT.** Section 14-12.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-06. (203) Initiating and responding tribunal of this state.** Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country.

**SECTION 8. AMENDMENT.** Section 14-12.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-07. (204) Simultaneous proceedings in another state.**

1. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or foreign country only if:
  - a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or foreign country;
  - b. The contesting party timely challenges the exercise of jurisdiction in the other state or foreign country; and
  - c. If relevant, this state is the home state of the child.
2. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or foreign country if:
  - a. The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
  - b. The contesting party timely challenges the exercise of jurisdiction in this state; and
  - c. If relevant, the other state or foreign country is the home state of the child.

**SECTION 9. AMENDMENT.** Section 14-12.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-08. (205) Continuing, exclusive jurisdiction to modify child support order.**

1. A tribunal of this state ~~issuing that has issued~~ a child support order consistent with the law of this state has ~~and shall exercise~~ continuing, exclusive jurisdiction ~~over a~~ to modify its child support order if the order is the controlling order and:

- a. ~~As long as~~ At the time of the filing of a request for modification this state ~~remains~~ is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
  - b. ~~Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.~~
2. A tribunal of this state ~~issuing that has issued~~ a child support order consistent with the law of this state may not exercise ~~its~~ continuing, exclusive jurisdiction to modify the order if ~~the order has been modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter;~~
- a. All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
  - b. Its order is not the controlling order.
3. If a child support order of this state is modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter, a tribunal of this state loses its ~~continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:~~
- a. ~~Enforce the order that was modified as to amounts accruing before the modification;~~
  - b. ~~Enforce nonmodifiable aspects of that order; and~~
  - c. ~~Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.~~
4. A tribunal of this state shall recognize the ~~continuing, exclusive jurisdiction of~~ if a tribunal of another state which has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter that Act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.
4. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.
5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

**SECTION 10. AMENDMENT.** Section 14-12.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-09. (206) Enforcement and modification of support order by tribunal having continuing jurisdiction** Continuing jurisdiction to enforce child support order.

1. A tribunal of this state ~~that has issued a child support order consistent with the law of this state~~ may serve as an initiating tribunal to request a tribunal of another state to enforce ~~or modify a support order issued in that state:~~
  - a. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or
  - b. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.
2. A tribunal of this state having continuing, ~~exclusive~~ jurisdiction over a support order may act as a responding tribunal to enforce ~~or modify~~ the order. ~~If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 14-12.2-28 to receive evidence from another state and section 14-12.2-30 to obtain discovery through a tribunal of another state.~~
3. A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

**SECTION 11. AMENDMENT.** Section 14-12.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-10. (207) Recognition** Determination of controlling child support order.

1. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.
2. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state or foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules in determining and by order shall determine which order to recognize for purposes of continuing, exclusive jurisdiction controls:

- a. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.
  - b. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter; ~~an~~:
    - (1) An order issued by a tribunal in the current home state of the child controls and must be so recognized, but if, or
    - (2) If an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.
  - c. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state ~~having jurisdiction over the parties~~ shall issue a child support order, which controls ~~and must be so recognized~~.
3. If two or more child support orders have been issued for the same obligor and ~~same child and if the obligor or the individual obligee resides in this state, a~~, upon request of a party ~~may request who is an individual or a support enforcement agency~~, a tribunal of this state ~~to~~ having personal jurisdiction over both the obligor and obligee who is an individual shall determine which order controls ~~and must be so recognized~~ under subsection 2. ~~The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination. The request may be filed with a registration for enforcement or registration for modification pursuant to sections 14-12.2-35 through 14-12.2-46.4, or may be filed as a separate proceeding.~~
  4. A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.
  5. The tribunal that issued the controlling order under subsection 1, 2, or 3 is the tribunal that has continuing, exclusive jurisdiction under to the extent provided in section 14-12.2-08 or 14-12.2-09.
  - 5- 6. A tribunal of this state ~~which~~ that determines by order ~~the identity of which is~~ the controlling order under subdivision a or b of subsection 2 or ~~which~~ subsection 3 that issues a new controlling order under subdivision c of subsection 2 shall state in that order ~~the~~:
    - a. The basis upon which the tribunal made its determination;
    - b. The amount of prospective support, if any; and
    - c. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided in by section 14-12.2-12.

- 6- 7. Within thirty days after issuance of an order determining ~~the identity of which is~~ the controlling order, the party obtaining the order shall file a certified copy of it ~~with in~~ each tribunal that had issued or registered an earlier order of child support. A party ~~who obtains or~~ support enforcement agency obtaining the order ~~and that~~ fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.
8. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

**SECTION 12. AMENDMENT.** Section 14-12.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-11. (208) Multiple child Child support orders for two or more obligees.** In responding to ~~multiple~~ registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or foreign country, a tribunal of this state shall enforce those orders in the same manner as if the ~~multiple~~ orders had been issued by a tribunal of this state.

**SECTION 13. AMENDMENT.** Section 14-12.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-12. (209) Credit for payments. Amounts** A tribunal of this state shall credit amounts collected ~~and credited~~ for a particular period pursuant to a ~~any~~ child support order ~~against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state or foreign country.~~

**SECTION 14.** Section 14-12.2-12.1 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-12.1. (210) Application of chapter to nonresident subject to personal jurisdiction.** A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to section 14-12.2-28, communicate with a tribunal outside this state pursuant to section 14-12.2-29, and obtain discovery through a tribunal outside this state pursuant to section 14-12.2-30. In all other respects, sections 14-12.2-13 through 14-12.2-47.13 do not apply and the tribunal shall apply the procedural and substantive law of this state.

**SECTION 15.** Section 14-12.2-12.2 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-12.2. (211) Continuing, exclusive jurisdiction to modify spousal support order.**

1. A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.
2. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.
3. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:
  - a. An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or
  - b. A responding tribunal to enforce or modify its own spousal support order.

**SECTION 16. AMENDMENT.** Section 14-12.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-13. (301) Proceedings under this chapter.**

1. Except as otherwise provided in this chapter, sections 14-12.2-13 through 14-12.2-31 apply to all proceedings under this chapter.
2. This chapter provides for the following proceedings:
  - a. Establishment of an order for spousal support or child support under section 14-12.2-32;
  - b. Enforcement of a support order and income-withholding order of another state without registration under sections 14-12.2-33 and 14-12.2-34;
  - c. Registration of an order for spousal support or child support of another state for enforcement under sections 14-12.2-35 through 14-12.2-46;
  - d. Modification of an order for child support or spousal support issued by a tribunal of this state under sections 14-12.2-06 through 14-12.2-09;
  - e. Registration of an order for child support of another state for modification under sections 14-12.2-35 through 14-12.2-46;
  - f. Determination of parentage under section 14-12.2-47; and

- g. ~~Assertion of jurisdiction over nonresidents under sections 14-12.2-04 and 14-12.2-05.~~
3. An individual petitioner or a support enforcement agency may ~~commence~~ initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or foreign country which has or can obtain personal jurisdiction over the respondent.

**SECTION 17. AMENDMENT.** Section 14-12.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-14. (302) Action Proceeding by minor parent.** A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

**SECTION 18. AMENDMENT.** Section 14-12.2-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-15. (303) Application of law of this state.** Except as otherwise provided by this chapter, a responding tribunal of this state shall:

1. ~~Shall apply~~ Apply the procedural and substantive law, ~~including the rules on choice of law~~, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
2. ~~Shall determine~~ Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

**SECTION 19. AMENDMENT.** Section 14-12.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-16. (304) Duties of initiating tribunal.**

1. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward ~~three copies~~ of the petition and its accompanying documents:
  - a. To the responding tribunal or appropriate support enforcement agency in the responding state; or
  - b. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.
2. If a ~~responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to this chapter requested by the responding tribunal~~, a tribunal of this state ~~may~~ shall issue a certificate or other document and make findings required by the law of the responding state. If the responding ~~state~~ tribunal is in a foreign ~~jurisdiction~~ country, upon request the tribunal ~~may~~ shall of this state shall specify the amount of support sought and, convert that amount into the equivalent amount in the foreign currency under applicable official or

market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state foreign tribunal.

**SECTION 20. AMENDMENT.** Section 14-12.2-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-17. (305) Duties and powers of responding tribunal.**

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly under subsection ~~3~~ 2 of section 14-12.2-13, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.
2. A responding tribunal of this state, to the extent ~~otherwise authorized not prohibited by other law,~~ may do one or more of the following:
  - a. ~~Issue~~ Establish or enforce a support order, modify a child support order, determine the controlling child support order, or ~~render a judgment to~~ determine parentage of a child;
  - b. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
  - c. Order income withholding;
  - d. Determine the amount of any arrearages, and specify a method of payment;
  - e. Enforce orders by civil or criminal contempt, or both;
  - f. Set aside property for satisfaction of the support order;
  - g. Place liens and order execution on the obligor's property;
  - h. Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;
  - i. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
  - j. Order the obligor to seek appropriate employment by specified methods;
  - k. Award reasonable attorney's fees and other fees and costs; and
  - l. Grant any other available remedy.
3. A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

4. A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.
5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.
6. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

**SECTION 21. AMENDMENT.** Section 14-12.2-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-18. (306) Inappropriate tribunal.** If a petition or comparable pleading is received by an inappropriate tribunal of this state, ~~the tribunal~~ shall forward the pleading and accompanying documents to an appropriate tribunal ~~in~~ of this state or another state and notify the petitioner where and when the pleading was sent.

**SECTION 22. AMENDMENT.** Section 14-12.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-19. (307) Duties of support enforcement agency.**

1. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.
2. A support enforcement agency of this state that is providing services to the petitioner ~~as appropriate~~ shall:
  - a. Take all steps necessary to enable an appropriate tribunal ~~in~~ of this state or another state or foreign country to obtain jurisdiction over the respondent;
  - b. Request an appropriate tribunal to set a date, time, and place for a hearing;
  - c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
  - d. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a ~~written~~ notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
  - e. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a ~~written~~ communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and
  - f. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

3. A support enforcement agency of this state which requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:
  - a. To ensure that the order to be registered is the controlling order; or
  - b. If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.
4. A support enforcement agency of this state which requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.
5. A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 14-12.2-31.
6. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

**SECTION 23. AMENDMENT.** Section 14-12.2-20 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-20. (308) Duty of attorney general.**

1. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.
2. The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

**SECTION 24. AMENDMENT.** Section 14-12.2-22 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-22. (310) Duties of state information agency.**

1. The department of human services is the state information agency under this chapter.
2. The state information agency shall:
  - a. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.

- b. Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states.
- c. Forward to the appropriate tribunal in the place county in this state in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from ~~an initiating tribunal or the state information agency of the initiating state~~ another state or foreign country.
- d. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

**SECTION 25. AMENDMENT.** Section 14-12.2-23 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-23. (311) Pleadings and accompanying documents.**

1. A In a proceeding under this chapter, a petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter, or to register and modify a support order of a tribunal of another state or foreign country must verify the file a petition. Unless otherwise ordered under section 14-12.2-24, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whom whose benefit support is sought or whose parentage is to be determined. The Unless filed at the time of registration, the petition must be accompanied by a certified copy of any support order in effect known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.
2. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

**SECTION 26. AMENDMENT.** Section 14-12.2-24 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-24. (312) Nondisclosure of information in exceptional circumstances.** Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. If a party alleges in an affidavit or a pleading under oath that the health, safety, or

liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

**SECTION 27. AMENDMENT.** Section 14-12.2-25 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-25. (313) Costs and fees.**

1. The petitioner may not be required to pay a filing fee or other costs.
2. If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.
3. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 14-12.2-35 through 14-12.2-46, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

**SECTION 28. AMENDMENT.** Section 14-12.2-26 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-26. (314) Limited immunity of petitioner.**

1. Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.
2. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.
3. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while physically present in this state to participate in the proceeding.

**SECTION 29. AMENDMENT.** Section 14-12.2-28 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-28. (316) Special rules of evidence and procedure.**

1. The physical presence of ~~the petitioner~~ a nonresident party who is an individual in a responding tribunal of this state is not required for the

establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

2. A verified petition, An affidavit, a document substantially complying with federally mandated forms, and or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under oath penalty of perjury by a party or witness residing in another outside this state.
3. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.
4. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.
5. Documentary evidence transmitted from ~~another outside this state~~ to a tribunal of this state by telephone, telecopier, or other means that do not provide an original ~~writing record~~ may not be excluded from evidence on an objection based on the means of transmission.
6. In a proceeding under this chapter, a tribunal of this state ~~may~~ shall permit a party or witness residing in ~~another outside this state~~ to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with ~~other tribunals of other states~~ in designating an appropriate location for the deposition or testimony.
7. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.
8. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.
9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.
10. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

**SECTION 30. AMENDMENT.** Section 14-12.2-29 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-29. (317) Communications between tribunals.** A tribunal of this state may communicate with a tribunal of ~~another outside this state~~ in ~~writing a record~~, or by telephone or other means, to obtain information concerning the laws of ~~that state~~, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding ~~in the other state~~. A tribunal of this state may furnish similar information by similar means to a tribunal of ~~another outside this state~~.

**SECTION 31. AMENDMENT.** Section 14-12.2-30 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-30. (318) Assistance with discovery.** A tribunal of this state may:

1. Request a tribunal ~~of another~~ outside this state to assist in obtaining discovery; and
2. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal ~~of another~~ outside this state.

**SECTION 32. AMENDMENT.** Section 14-12.2-31 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-31. (319) Receipt and disbursement of payments.**

1. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.
2. If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:
  - a. Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and
  - b. Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.
3. The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection 2 shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

**SECTION 33. AMENDMENT.** Section 14-12.2-32 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-32. (401) Petition to establish support order.**

1. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:
  - a. The individual seeking the order resides ~~in another~~ outside this state; or
  - b. The support enforcement agency seeking the order is located ~~in another~~ outside this state.

2. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:
  - a. ~~The respondent has signed a verified statement acknowledging parentage~~ A presumed father of the child;
  - b. ~~The respondent has been determined by or pursuant to law to be the parent~~ Petitioning to have his paternity adjudicated; or
  - c. ~~There is other clear and convincing evidence that the respondent is the child's parent~~ Identified as the father of the child through genetic testing;
  - d. An alleged father who has declined to submit to genetic testing;
  - e. Shown by clear and convincing evidence to be the father of the child;
  - f. An acknowledged father as provided by chapter 14-20;
  - g. The mother of the child; or
  - h. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.
3. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders under section 14-12.2-17.

**SECTION 34.** Section 14-12.2-32.1 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-32.1. (402) Proceeding to determine parentage.** A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this chapter or a law or procedure substantially similar to this chapter.

**SECTION 35. AMENDMENT.** Section 14-12.2-33 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33. (501) Employer's receipt of income-withholding order of another state.** An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person or entity defined as the obligor's employer under section 14-09-09.10 without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

**SECTION 36. AMENDMENT.** Section 14-12.2-33.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33.1. (502) Employer's compliance with income-withholding order of another state.**

1. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

2. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.
3. Except as otherwise provided by subsection 4 and section 14-12.2-33.2, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:
  - a. The duration and amount of periodic payments of current child support, stated as a sum certain;
  - b. The person or ~~agency~~ designated to receive payments and the address to which the payments are to be forwarded;
  - c. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
  - d. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
  - e. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.
4. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:
  - a. The employer's fee for processing an income-withholding order;
  - b. The maximum amount permitted to be withheld from the obligor's income; and
  - c. The times within which the employer must implement the withholding order and forward the child support payment.

**SECTION 37. AMENDMENT.** Section 14-12.2-33.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33.2. (503) ~~Compliance~~ Employer's compliance with multiple two or more income-withholding orders.** If an obligor's employer receives ~~multiple~~ two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the ~~multiple~~ orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for ~~multiple~~ two or more child support obligees.

**SECTION 38. AMENDMENT.** Section 14-12.2-33.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33.3. (504) Immunity from civil liability.** An employer ~~who~~ that complies with an income-withholding order issued in another state in accordance

with this chapter is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

**SECTION 39. AMENDMENT.** Section 14-12.2-33.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33.4. (505) Penalties for noncompliance.** An employer ~~who~~ that willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

**SECTION 40. AMENDMENT.** Section 14-12.2-33.5 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-33.5. (506) Contest by obligor.**

1. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 14-12.2-35 through 14-12.2-46.4, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state. ~~Section 14-12.2-38 applies to the contest.~~
2. The obligor shall give notice of the contest to:
  - a. A support enforcement agency providing services to the obligee;
  - b. Each employer that has directly received an income-withholding order relating to the obligor; and
  - c. The person ~~or agency~~ designated to receive payments in the income-withholding order or if no person ~~or agency~~ is designated, to the obligee.

**SECTION 41. AMENDMENT.** Section 14-12.2-34 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-34. (507) Administrative enforcement of orders.**

1. A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued ~~by a tribunal of in~~ another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.
2. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

**SECTION 42. AMENDMENT.** Section 14-12.2-35 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-35. (601) Registration of order for enforcement.** A support order or an income-withholding order issued ~~by a tribunal of in~~ another state or a foreign support order may be registered in this state for enforcement.

**SECTION 43. AMENDMENT.** Section 14-12.2-36 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-36. (602) Procedure to register order for enforcement.**

1. A Subject to section 14-12.2-47.6, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following ~~documents and information records~~ to the appropriate tribunal in this state:
  - a. A letter of transmittal to the tribunal requesting registration and enforcement;
  - b. Two copies, including one certified copy, of ~~all orders the order to be registered, including any modification of an the order;~~
  - c. A sworn statement by the ~~party seeking person requesting~~ registration or a certified statement by the custodian of the records showing the amount of any arrearage;
  - d. The name of the obligor and, if known:
    - (1) The obligor's address and social security number;
    - (2) The name and address of the obligor's employer and any other source of income of the obligor; and
    - (3) A description and the location of property of the obligor in this state not exempt from execution; and
  - e. ~~The~~ Except as otherwise provided in section 14-12.2-24, name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a ~~foreign judgment an order of another state or foreign country,~~ together with one copy of the documents and information, regardless of their form.
3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.
4. If two or more orders are in effect, the person requesting registration shall:
  - a. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

- b. Specify the order alleged to be the controlling order, if any; and
  - c. Specify the amount of consolidated arrears, if any.
5. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the requests to each party whose rights may be affected by the determination.

**SECTION 44. AMENDMENT.** Section 14-12.2-37 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-37. (603) Effect of registration for enforcement.**

1. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.
2. A registered order issued in another state or foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
3. Except as otherwise provided in this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

**SECTION 45. AMENDMENT.** Section 14-12.2-38 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-38. (604) Choice of law.**

1. ~~The~~ Except as otherwise provided in subsection 4, the law of the issuing state or foreign country governs the:
  - a. The nature, extent, amount, and duration of current payments ~~and other obligations of support and the~~ under a registered support order;
  - b. The computation and payment of arrearages ~~and~~ accrual of interest on the arrearages under the support order; and
  - c. The existence and satisfaction of other obligations under the support order.
2. In a proceeding for arrearages under a registered support order, the statute of limitation ~~under the laws~~ of this state, or of the issuing state or foreign country, whichever is longer, applies.
3. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or foreign country registered in this state.
4. After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a

tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

**SECTION 46. AMENDMENT.** Section 14-12.2-39 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-39. (605) Notice of registration of order.**

1. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
2. ~~The A~~ notice must inform the nonregistering party:
  - a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
  - b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice unless the registered order is subject to section 14-12.2-47.7;
  - c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages ~~and precludes further contest of that order with respect to any matter that could have been asserted;~~ and
  - d. Of the amount of any alleged arrearages.
3. If the registering party asserts that two or more orders are in effect, a notice must also:
  - a. Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;
  - b. Notify the nonregistering party of the right to a determination of which is the controlling order;
  - c. State that the procedures provided in subsection 2 apply to the determination of which is the controlling order; and
  - d. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.
4. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding requirements of chapter 14-09.

**SECTION 47. AMENDMENT.** Section 14-12.2-40 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-40. (606) Procedure to contest validity or enforcement of registered order.**

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing ~~within twenty days after notice of the registration~~ in accordance with the notice provided in section 14-12.2-39. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-12.2-41.
2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**SECTION 48. AMENDMENT.** Section 14-12.2-41 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-41. (607) Contest of registration or enforcement.**

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
  - a. The issuing tribunal lacked personal jurisdiction over the contesting party;
  - b. The order was obtained by fraud;
  - c. The order has been vacated, suspended, or modified by a later order;
  - d. The issuing tribunal has stayed the order pending appeal;
  - e. There is a defense under the law of this state to the remedy sought;
  - f. Full or partial payment has been made; ~~or~~
  - g. The statute of limitation under section 14-12.2-38 precludes enforcement of some or all of the alleged arrearages; or
  - h. The alleged controlling order is not the controlling order.
2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

**SECTION 49. AMENDMENT.** Section 14-12.2-43 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-43. (609) Procedure to register child support order of another state for modification.** A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 14-12.2-35 through ~~14-12.2-38 of this chapter~~ 14-12.2-42 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.

**SECTION 50. AMENDMENT.** Section 14-12.2-44 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-44. (610) Effect of registration for modification.** A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 14-12.2-45 or 14-12.2-46.1 have been met.

**SECTION 51. AMENDMENT.** Section 14-12.2-45 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-45. (611) Modification of child support order of another state.**

1. ~~After~~ If section 14-12.2-46.1 does not apply, upon petition a tribunal of this state may modify a child support order issued in another state ~~has been which~~ is registered in this state; ~~the responding tribunal of this state may modify that order only if section 14-12.2-46.1 does not apply and if,~~ after notice and hearing it, the tribunal finds that:
  - a. The following requirements are met:
    - (1) ~~The~~ Neither the child, nor the individual obligee who is an individual, and nor the obligor do not reside resides in the issuing state;
    - (2) A petitioner who is a nonresident of this state seeks modification; and
    - (3) The respondent is subject to the personal jurisdiction of the tribunal of this state; or
  - b. ~~The~~ This state is the residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction ~~over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under the Uniform Interstate Family Support Act, the consent otherwise~~

~~required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.~~

2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 14-12.2-10 establishes the aspects of the support order which are nonmodifiable.
4. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.
5. On issuance of an order by a tribunal of this state modifying a child support order issued in another state, a the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.
6. Without regard to the restrictions on modification of a child support order stated in subsection 2 of section 14-12.2-04 and this section, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:
  - a. One party resides in another state; and
  - b. The other party resides outside the United States.

**SECTION 52. AMENDMENT.** Section 14-12.2-46 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-46. (612) Recognition of order modified in another state.** ~~A if a child support order issued by a tribunal of this state shall recognize a modification of its earlier child support order is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall, a tribunal of this state:~~

1. ~~Enforce the~~ May enforce its order that was modified only as to ~~amounts~~ arrears and interest accruing before the modification;
2. ~~Enforce only nonmodifiable aspects of that order;~~
3. ~~Provide other~~ May provide appropriate relief ~~only~~ for violations of ~~that~~ its order which occurred before the effective date of the modification; and
4. ~~3. Recognize~~ Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

**SECTION 53. AMENDMENT.** Section 14-12.2-46.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-46.1. (613) Jurisdiction to modify child support order of another state when individual parties reside in this state.**

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.
2. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 14-12.2-01 through 14-12.2-12, sections 14-12.2-35 through ~~14-12.2-46.2~~ 14-12.2-46.4, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 14-12.2-13 through 14-12.2-34 and sections 14-12.2-47, 14-12.2-48, and 14-12.2-49 do not apply.

**SECTION 54.** Section 14-12.2-46.3 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-46.3. (615) Jurisdiction to modify child support order of foreign country or political subdivision.**

1. Except as otherwise provided in section 14-12.2-47.11, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to section 14-12.2-45 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.
2. An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

**SECTION 55.** Section 14-12.2-46.4 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-46.4. (616) Procedure to register child support order of foreign country for modification.** A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not subject to the convention may register that order in this state as provided in sections 14-12.2-35 through 14-12.2-42 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

**SECTION 56.** Section 14-12.2-47.1 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.1. (701) Definitions.** In sections 14-12.2-47.1 through 14-12.2-47.13:

1. "Application" means a request under the convention by an obligee, obligor, or on behalf of a child, made through a central authority for assistance from another central authority.
2. "Central authority" means the entity designated by a country to perform the functions specified in the convention.
3. "Convention support order" means an order of a tribunal of a foreign country in which the convention is in force with respect to the United States.
4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.
5. "Foreign central authority" means the entity designated by a foreign country in which the convention is in force with respect to the United States to perform the functions specified in the convention.
6. "Foreign support agreement" means an agreement for support in a record, also known as a maintenance arrangement in the convention, that:
  - a. Is enforceable as a support order in the country of origin;
  - b. Has been formally drawn up or registered or has been authenticated by, or concluded, registered, or filed with a foreign tribunal; and
  - c. May be reviewed and modified by a foreign tribunal.
7. "United States central authority" means the secretary of the United States department of health and human services.

**SECTION 57.** Section 14-12.2-47.2 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.2. (702) Applicability.** Sections 14-12.2-47.1 through 14-12.2-47.13 apply only to a support proceeding involving a foreign country in which the convention is in force with respect to the United States. In such a proceeding, if a provision of sections 14-12.2-47.1 through 14-12.2-47.13 is inconsistent with a provision of sections 14-12.2-01 through 14-12.2-46.4, sections 14-12.2-47.1 through 14-12.2-47.13 control.

**SECTION 58.** Section 14-12.2-47.3 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.3. (703) Relationship of department of human services to United States central authority.** The department of human services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

**SECTION 59.** Section 14-12.2-47.4 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.4. (704) Initiation by department of human services of support proceeding subject to convention.**

1. In a proceeding subject to the convention, the department of human services of this state shall:
  - a. Transmit and receive applications; and
  - b. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.
2. The following support proceedings are available to an obligee under the convention:
  - a. Recognition or recognition and enforcement of a foreign support order;
  - b. Enforcement of a support order issued or recognized in this state;
  - c. Establishment of a support order if there is no existing order, including, where necessary, determination of parentage;
  - d. Establishment of a support order if recognition of a foreign support order is refused under subsection 2, 4, or 9 of section 14-12.2-47.8;
  - e. Modification of a support order of a tribunal of this state; and
  - f. Modification of a support order of a tribunal of another state or foreign country.
3. The following support proceedings are available under the convention to an obligor against whom there is an existing support order:
  - a. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
  - b. Modification of a support order of a tribunal of this state; and
  - c. Modification of a support order of a tribunal of another state or foreign country.
4. A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

**SECTION 60.** Section 14-12.2-47.5 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.5. (705) Direct request.**

1. A petitioner may file a direct request in a tribunal of this state seeking the establishment or modification of a support order or determination of parentage. In such a proceeding, the law of this state applies.

2. A petitioner may file a direct request in a tribunal of this state seeking the recognition and enforcement of a support order or support agreement. In such a proceeding, the provisions of sections 14-12.2-47.6 through 14-12.2-47.13 apply.
3. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:
  - a. No security, bond, or deposit shall be required to guarantee the payment of costs and expenses related to the proceedings; and
  - b. The obligee or obligor, who in the issuing country has benefited from free legal assistance, shall be entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.
4. An individual filing directly with a tribunal will not receive assistance from the department of human services.
5. Nothing in sections 14-12.2-47.1 through 14-12.2-47.13 prevents the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or support agreement.

**SECTION 61.** Section 14-12.2-47.6 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.6. (706) Registration of convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in sections 14-12.2-35 through 14-12.2-46.4.
2. Notwithstanding section 14-12.2-23 and subsection 1 of section 14-12.2-36, a request for registration of a convention support order must be accompanied by:
  - a. A complete text of the support order, or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;
  - b. A record stating that the support order is enforceable in the issuing country;
  - c. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
  - d. A record showing the amount of arrears, if any, and the date the amount was calculated;

- e. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
- f. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.
3. A request for registration of a convention support order may seek recognition and partial enforcement of the order.
4. A tribunal of this state may vacate the registration of a convention support order on its own motion, without the filing of a contest under section 14-12.2-47.7 only if the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.
5. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

**SECTION 62.** Section 14-12.2-47.7 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.7. (707) Contest of registered convention support order.**

1. Except as otherwise provided in sections 14-12.2-47.1 through 14-12.2-47.13, sections 14-12.2-39 through 14-12.2-42 apply to a contest of a registered convention support order.
2. A party contesting a registered convention support order must file a contest within thirty days after notice of the registration unless the contesting party does not reside in the United States, in which case the contest must be filed within sixty days after notice.
3. If the nonregistering party fails to contest the registered convention support order in a timely manner, the order is enforceable by operation of law.
4. A contest of a registered convention support order may be based only on grounds set forth in section 14-12.2-47.8, and the contesting party bears the burden of proof.
5. In a contest of a registered convention support order, a tribunal of this state:
  - a. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and
  - b. May not review the merits of the support order.
6. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.
7. An appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

**SECTION 63.** Section 14-12.2-47.8 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.8. (708) Refusal of recognition and enforcement of registered convention support order.** A tribunal of this state may refuse recognition and enforcement of a registered convention support order only on the following grounds:

1. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
2. The issuing tribunal lacked personal jurisdiction consistent with section 14-12.2-04;
3. The order is not enforceable in the issuing country;
4. The order was obtained by fraud in connection with a matter of procedure;
5. A record transmitted in accordance with section 14-12.2-47.6 lacks authenticity or integrity;
6. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;
7. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement in this state;
8. Payment, to the extent alleged arrears have been paid in whole or in part;
9. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country when the law of that country:
  - a. Provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - b. Does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or
10. The order was made in violation of section 14-12.2-47.11.

**SECTION 64.** Section 14-12.2-47.9 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.9. (709) Partial enforcement - New support order.**

1. If a tribunal of this state may not recognize and enforce the whole of a convention support order, it shall enforce any severable part of the

order. An application or direct request may seek recognition and partial enforcement of a convention support order.

2. If a tribunal of this state may not recognize a convention support order under subsection 2, 4, or 9 of section 14-12.2-47.8:
  - a. The tribunal may not dismiss proceeding without allowing a reasonable time for a party to request the establishment of a new support order;
  - b. The department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-12.2-47.4.

**SECTION 65.** Section 14-12.2-47.10 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.10. (710) Foreign support agreement.**

1. Except as provided in subsections 3 and 4, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.
2. An application or direct request for recognition and enforcement of a foreign support agreement shall be accompanied by:
  - a. A complete text of the foreign support agreement; and
  - b. A record stating that the foreign support agreement is enforceable as a decision in the issuing country.
3. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.
4. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:
  - a. Recognition and enforcement of the agreement is manifestly incompatible with public policy;
  - b. The agreement was obtained by fraud or falsification;
  - c. The agreement is incompatible with a support order involving the same parties and having the same purpose, either in this state, another state, or a foreign country if the support order is entitled to recognition in this state; or
  - d. The record submitted under subsection 2 lacks authenticity or integrity.
5. A proceeding for recognition and enforcement of a foreign support agreement shall be suspended during the pendency of a challenge to the agreement before a tribunal of another state or foreign country.

**SECTION 66.** Section 14-12.2-47.11 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.11. (711) Modification of child support order subject to convention.**

1. A tribunal of this state may not modify a child support order subject to the convention if the obligee remains a resident of the foreign country where the support order was issued unless:
  - a. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or
  - b. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
2. If a tribunal of this state may not modify the child support order subject to the convention because the order may not be recognized in this state, subdivision a of subsection 2 of section 14-12.2-47.9 applies.

**SECTION 67.** Section 14-12.2-47.12 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.12. (712) Personal information - Limit on use.** Personal information gathered or transmitted under sections 14-12.2-47.1 through 14-12.2-47.13 may be used only for the purposes for which it was gathered or transmitted.

**SECTION 68.** Section 14-12.2-47.13 of the North Dakota Century Code is created and enacted as follows:

**14-12.2-47.13. (713) English translation required.** A record filed with a tribunal of this state under sections 14-12.2-47.1 through 14-12.2-47.13 must be in the original language and, if necessary, must be accompanied by an English translation.

**SECTION 69. AMENDMENT.** Section 14-12.2-48 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-48. (801) Grounds for rendition.**

1. For purposes of sections 14-12.2-48 and 14-12.2-49, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.
2. The governor of this state may:
  - a. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or
  - b. On the demand ~~by~~ of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

3. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

**SECTION 70. AMENDMENT.** Section 14-12.2-49 of the North Dakota Century Code is amended and reenacted as follows:

**14-12.2-49. (802) Conditions of rendition.**

1. Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.
2. If, under this chapter or a law substantially similar to this chapter, the ~~Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,~~ the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.
3. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

**SECTION 71. REPEAL.** Section 14-12.2-47 of the North Dakota Century Code is repealed.

**SECTION 72. APPLICATION.** This Act applies to a proceeding commenced on or after the effective date to establish a support order or determine parentage or to register, recognize, enforce, or modify a prior order or agreement, whether issued or entered into before, on, or after the effective date.

**SECTION 73. CONTINGENT EFFECTIVE DATE.** This Act becomes effective on the date the department of human services certifies to the legislative council that the Hague convention on the international recovery of child support and other forms of family maintenance is ratified and that the United States deposited its instrument of ratification.

Approved April 22, 2009  
Filed April 23, 2009

# EDUCATION

## CHAPTER 153

### SENATE BILL NO. 2085

(Education Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact sections 15-01-02.1, 15-02-08, 15-03-01.1, 15-03-02, 15-03-04, 15-03-05.1, and 15-06-40 of the North Dakota Century Code, relating to the management of the trust funds under the control of the board of university and school lands; to repeal sections 15-03-05.2 and 15-08-01 of the North Dakota Century Code, relating to distributions from trust funds under the control of the board of university and school lands; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-01-02.1. Board of university and school lands to set and establish fees - Collections.** The board of university and school lands shall have authority to set and establish fees in amounts equal to the cost of the issuance of patents, deeds, leases, assignments, land contracts, holding land sales, furnishing documents, receiving and processing all loans made by the board, managing property acquired under chapter 15-08.1, and managing property for other state entities. All other fees provided for in this section must be deposited in the state lands maintenance fund.

**SECTION 2. AMENDMENT.** Section 15-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-02-08. Commissioner to keep record of permanent funds - Biennial report.** The commissioner shall keep a record in suitable books showing a detailed quarterly statement of the condition of all of the permanent funds under the control of the board of university and school lands, the amount of each fund, how invested, when due, interest paid, and all acts connected with the management of such funds. All records and record books are open at all times for inspection by the public. The commissioner may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. If submitted, the report must show all investments of the several funds, the work done during the preceding fiscal biennium, the number of acres [~~hectares~~] of land sold or leased by the department, the amount received therefor, the amount of interest proceeds received to the credit of the several funds, the expense of administration of the department, and all other matters relating to the commissioner's office as are necessary to disclose fully the operation of the department.

**SECTION 3. AMENDMENT.** Section 15-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-03-01.1. Creation of maintenance fund - Income derived from state assets.** ~~Ten percentum of the income derived from any state~~ There is created a special fund designated as the state lands maintenance fund, which is funded by the trust fund assets under the control of the board of university and school lands constitutes a fund to be known as the state lands maintenance fund. All expenses paid out of the state lands maintenance fund are subject to legislative appropriation.

**SECTION 4. AMENDMENT.** Section 15-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-03-02. Interest and income Proceeds from grant lands trust fund assets.** ~~All moneys accumulating in the interest and income fund arising proceeds from the sale of leasing and management of any lands granted by the state or by the Constitution of North Dakota for any institution of higher education of the state~~ assets under the control of the board of university and school lands must be deposited in the trust fund for which the assets were granted or earned and are pledged specifically for the maintenance of the institution for which such lands assets were granted after deducting the cost of administering such funds as provided in this chapter or earned. The cost of administering a trust fund may be paid out of the fund, in accordance with section 1 of article IX of the Constitution of North Dakota.

<sup>82</sup> **SECTION 5. AMENDMENT.** Section 15-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-03-04. Legal investments.** Subject to the provisions of section 15-03-05, the board of university and school lands shall apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable ~~income~~ investment returns. Notwithstanding any investments made before July 1, 1997, the board may not use any funds entrusted to it to purchase, as sole owner, commercial or residential real property in North Dakota without prior approval of the legislative assembly or the budget section of the legislative council. The board may also lend securities held by the permanent funds, including the authority to pledge a security interest in the securities in the possession of a custodian agent. These securities must be collateralized as directed by the board.

**SECTION 6. AMENDMENT.** Section 15-03-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-03-05.1. Calculation of fund income - Coal development trust fund.** ~~At the end of each fiscal year, the board shall calculate the income earned by the permanent funds coal development trust fund. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.~~

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<sup>82</sup> Section 15-03-04 was also amended by section 98 of House Bill No. 1436, chapter 482.

**SECTION 7. AMENDMENT.** Section 15-06-40 of the North Dakota Century Code is amended and reenacted as follows:

**15-06-40. Application of income.** The state forester shall apply the income so derived first to the payment of the cost of all care and development of such land, and, second, the net annual income must be paid to the board of university and school lands for the credit of the ~~interest and income fund of the~~ permanent school funds, the same to be properly apportioned among the several funds therein.

**SECTION 8. REPEAL.** Sections 15-03-05.2 and 15-08-01 of the North Dakota Century Code are repealed.

**SECTION 9. EFFECTIVE DATE.** This Act becomes effective at the time the constitutional amendments, approved as measure No. 1 at the 2006 general election, become effective or July 1, 2009, whichever is later.

Approved April 9, 2009  
Filed April 13, 2009

**CHAPTER 154****HOUSE BILL NO. 1139**

(Education Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact section 15-05-07 of the North Dakota Century Code, relating to the board of university and school lands requesting the state geologist to determine the existence of coal.

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

**SECTION 1. AMENDMENT.** Section 15-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-05-07. Board to ascertain and keep schedule of all State geologist to determine lands on which coal exists.** The board of university and school lands; ~~with the assistance of~~ may request that the state geologist; ~~shall ascertain and~~ determine the quantity and description of all lands under its control on which coal exists ~~and shall compile and keep a statement and schedule of all such lands.~~

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 155****SENATE BILL NO. 2389**

(Senator O'Connell)  
(Representatives Froseth, Hunskor)

AN ACT to amend and reenact sections 15-10-01, 15-16-01, and 15-17-03 of the North Dakota Century Code, relating to a name change for the school of forestry at Bottineau.

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

**SECTION 1. AMENDMENT.** Section 15-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-01. State board of higher education - Institutions administered by board.** The state board of higher education shall have the control and administration of the following state educational institutions:

1. The state university and the school of mines at Grand Forks, with their substations.
2. The North Dakota state university of agriculture and applied science and the agricultural experiment station at Fargo, with their substations or centers.
3. The school of science at Wahpeton.
4. The Valley City state university, Mayville state university, Minot state university, and Dickinson state university.
5. ~~The school of forestry at Bottineau.~~
- 6- The following colleges: Bismarck state college, Dakota college at Bottineau, Lake Region state college, and Williston state college.
- 7- 6. And such other state institutions of higher education as may be established.

**SECTION 2. AMENDMENT.** Section 15-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-16-01. School of forestry - Location.** The school of forestry must be located at Dakota college, Bottineau, North Dakota.

**SECTION 3. AMENDMENT.** Section 15-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-17-03. Limitations on powers of institutional holding association.** An institutional holding association is subject to the following limitations and restrictions:

1. Dormitories and their equipment and appurtenances must be erected and installed only according to plans and specifications therefor

approved by the state board of higher education and at a cost for site, building, and equipment to be fixed by the board within the maximum limit provided in this section.

2. Such dormitories and their equipment and appurtenances must be owned, managed, operated, and conducted at all times by the association, its successors or assigns, solely for the educational purpose provided in this chapter in connection with one of the state educational institutions and must be under the control and supervision of the state board of higher education, and operated according to such rules and regulations, including rental charges, as must be prescribed by the board, but such rental charges may not be less than an amount sufficient to pay the interest on the bonded indebtedness and the serial bonds of the association as they mature.
3. An institutional holding association must be nonprofit sharing, shall issue no corporate stock, and no member of the association may have or acquire any divisional or other share or interest in any of its property.
4. The income of such association must be applied only to the payment of its debts and operating expenses, including necessary repairs and upkeep of its properties.
5. When all of the debts against any site, dormitory, and equipment are paid, all of the right, title, and interest of the association or its successors or assigns therein terminates immediately, and the same becomes the property of and must be conveyed to the state.
6. Any transfer or encumbrance of the property of an institutional holding association, except as permitted in this chapter, is prohibited and is null and void.
7. The amount of money borrowed or debts contracted by an institutional holding association may not exceed the aggregate cost of the site, dormitory, and equipment as fixed by the state board of higher education, and the payment thereof may not extend over a period of more than fifty years. The terms and conditions of such loans or debts, except as herein provided, must be fixed and approved by the board.
8. Dormitories must be erected only at the state educational institutions herein named within the cost limits for site, building, and equipment herein specified:
  - a. One at or near the university at a cost of not more than two hundred thousand dollars.
  - b. One at or near the North Dakota state university of agriculture and applied science at a cost of not more than two hundred thousand dollars.
  - c. One at or near each of the normal schools located at Valley City, Mayville, Minot, and Dickinson at a cost of not more than one hundred fifty thousand dollars.
  - d. One at or near the state school of science at Wahpeton at a cost of not more than one hundred thousand dollars.

- e. One at or near ~~the state school of forestry at~~ Dakota college, Bottineau at a cost of not more than fifty thousand dollars.
9. No dormitory may be erected upon the campus of any state educational institution until a written permit therefor first is granted and issued to the association by the state board of higher education. Such permit must describe the ground to be used and must provide that the dormitory to be erected thereon must be erected, owned, and operated only by the association, its successors and assigns. The association and its successors and assigns shall acquire no right, title, or interest in and to the campus site, the dormitory erected thereon, or the equipment thereof, except the right to operate the dormitory solely for the educational purposes, in the manner, and upon the terms and conditions provided in this chapter.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 156****HOUSE BILL NO. 1566**

(Representatives Kasper, R. Kelsch, L. Meier)  
(Senators Flakoll, Wardner)

AN ACT to require that the commissioner of higher education study the interplay between the North Dakota university system and tribally controlled community colleges.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. COMMISSIONER OF HIGHER EDUCATION - STUDY - HIGHER EDUCATION AND TRIBALLY CONTROLLED COMMUNITY COLLEGES.**

The state commissioner of higher education shall study during the 2009-10 interim, the interplay between the North Dakota university system and tribally controlled community colleges. Specifically, the commissioner shall address ways in which the North Dakota university system as a whole and the individual campuses can better interact with tribally controlled community colleges through improved communication, collaboration, and relationship-building activities. In addition, the commissioner shall focus on ways in which tribally controlled community colleges can encourage American Indians to pursue options in higher education, thereby bringing economic benefit to their families and communities and ways in which the university system and the individual campuses can work with tribally controlled community colleges to provide tutoring, mentoring, and other types of assistance necessary to ensure that the retention rates and graduation rates of American Indian students are increased. The commissioner shall report any findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 157****SENATE BILL NO. 2038**

(Legislative Council)  
(Higher Education Committee)

AN ACT to amend and reenact sections 15-10-12, 54-44.1-04, 54-44.1-06, and 54-44.1-11 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds; budget requests and block grant appropriations for the North Dakota university system; cancellation of unexpended appropriations of the North Dakota university system; to provide for a report; to provide for legislative council studies of higher education; to provide legislative intent for higher education accountability measures; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12. (Effective through June 30, 2009 2011) Board may accept gifts and bequests - Deposit and appropriation of institutional funds.** Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**(Effective after June 30, 2009 2011) Board may accept gifts and bequests - Deposit of funds.** The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**SECTION 2. AMENDMENT.** Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-04. (Effective through June 30, 2009 July 31, 2011) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The budget estimates for the North Dakota university system must include block grants for the university system for a base funding component and for an initiative funding component for specific strategies or initiatives and a budget estimate for an asset funding component for renewal and replacement of physical plant assets at the institutions of higher education. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in the director's discretion may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its

estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director designates shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**(Effective after June 30, 2009 July 31, 2011) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**SECTION 3. AMENDMENT.** Section 54-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-06. (Effective through June 30, 2009 July 31, 2011) Preparation of the budget data - Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or

deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.

7. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act. The draft of the proposed appropriations act for the North Dakota university system must include block grants for a base funding appropriation and for an initiative funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets at the institutions of higher education.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

**(Effective after June 30, 2009 July 31, 2011) Preparation of the budget data - Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations

relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.

3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and

services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.

9. Any other information as the director of the budget determines desirable or as is required by law.

**SECTION 4. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. (Effective through June 30, 2009 July 31, 2011) Office of management and budget to cancel unexpended appropriations - When they may continue.** Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

**(Effective after June 30, 2009 July 31, 2011) Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this

section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

#### **SECTION 5. STATE BOARD OF HIGHER EDUCATION - REQUIRED REPORTS.**

1.
  - a. During the 2009-10 interim, the state board of higher education shall compile by campus information regarding the salaries, benefits, and total compensation of higher education instructional personnel having master's degrees.
  - b. The state board of higher education shall compare the information required by subdivision a with the salaries, benefits, and total compensation of teachers who have master's degrees and who are employed by the school district headquartered in the same city as that in which each institution of higher education is located. The comparison should reflect a comparable nine- to ten-month employment contract.
2. During the 2009-10 interim, the state board of higher education shall compile by campus information regarding the number of students who are enrolled only in courses delivered electronically to a site not on the campus, the types of courses delivered in this manner, and demographic information regarding the students enrolled in such courses.
3. During the 2009-10 interim, the state board of higher education shall compile by campus information regarding the number of students who have not yet graduated from high school but who are enrolled in higher education courses offered for credit.

4. The state board of higher education shall provide the information required by this section to the legislative council at the time and in the manner directed by the council.

#### **SECTION 6. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION.**

1. The legislative council shall consider appointing a higher education committee for the 2009-10 interim. If appointed, the committee shall spend a majority of time studying the means by which the North Dakota university system can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, and if time allows, the committee may visit select higher education institutions. If the legislative council appoints a committee to study issues related to higher education during the 2009-10 interim, the council shall include on the committee the chairman of the house education committee or the chairman's designee and the chairman of the senate education committee or the chairman's designee.
2. The study must focus on ways to increase postsecondary access, improve the quality of education, contain costs and other means, including productivity, to maximize the usage of the North Dakota university system in meeting the human capital needs of the state.
3. The study must include a review of policy recommendations, as appropriate, which address the postsecondary delivery system, including the mix of institutions, education attainment gaps, degree production gaps, recruitment and retention of students, and workforce training needs.
4. The study must include a review of the impact of the state's changing demographics on the university system's long-term financing plan.
5. The study must recommend goals for each of the higher education cornerstones.
6. The study may include the use of higher education roundtable format.
7. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.
8. The state board of higher education also shall take the recommendations into account and make appropriate changes to practices, board policy, and budget needs and allocation.

**SECTION 7. LEGISLATIVE INTENT - HIGHER EDUCATION ACCOUNTABILITY MEASURES.** It is the intent of the legislative assembly that the state board of higher education's performance and accountability report as required by section 15-10-14.2 include an executive summary and information regarding:

1. Education attainment, including:
  - a. Proportion of population, 25 to 34 years of age, with an associate's degree or higher benchmarked against the national average and best-performing country.



- c. Average amount of student loan debt incurred each year by undergraduate students benchmarked against the national average and the state with the lowest ratio.
5. Education excellence, including:
    - a. Student performance on nationally recognized exams benchmarked against national averages.
    - b. First-time licensure pass rates benchmarked against the best performing states.
    - c. Alumni and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities benchmarked against historical trends.
    - d. Employer-reported satisfaction with preparation of recently hired graduates benchmarked against historical trends.
  6. Financial operations, including:
    - a. Appropriations for general operations plus net tuition revenue per full-time equivalent student benchmarked against the national average and the best-performing state.
    - b. Student share of funding for general operations benchmarked against the national average and historical trends.
    - c. Number of degrees and certificates produced relative to annual state appropriations for general operations plus net tuition revenue benchmarked against the best-performing state.
  7. System functioning, including:
    - a. Number of student credit-hours delivered by North Dakota university system institutions to students attending another system institution benchmarked against historical data.
    - b. Results of a biennial survey of state leaders regarding the perceptions of the system's functionality benchmarked against historical data.

**SECTION 8. STATE BOARD OF HIGHER EDUCATION - REPORTS TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** Each institution under the control of the state board of higher education shall report to the appropriations committees of the sixty-second legislative assembly regarding:

1. A comparison of the budgeted amounts to actual expenditures by major expenditure type for the fiscal year ending June 30, 2010.
2. A comparison of the budgeted amounts to actual expenditures by major expenditure type through the most recent month available at the time the report is presented to the appropriations committees.

**SECTION 9. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION.**

1. During the 2009-10 interim, the legislative council chairman shall appoint an interim higher education committee to study issues affecting higher education.
2. The interim committee shall hold at least six education summit meetings to discuss topics that may include:
  - a. Alternative uses of institutions and changes to institutional missions;
  - b. Issues affecting two-year campuses;
  - c. Tuition affordability, including a review of tuition reciprocity agreements;
  - d. Accessibility of higher education;
  - e. Workforce needs;
  - f. Contributions to economic development;
  - g. Utilization and capacity of higher education institution facilities;
  - h. Quality of education being delivered; and
  - i. Revenue-neutral policies that would aid in the reduction of student loan debt.
3. The chairman of the interim higher education committee may invite summit topic experts, representatives of the North Dakota university system, the private sector, and students to participate in the summit meetings to provide information to the committee as determined necessary to assist the committee in conducting its study.
4. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 158****SENATE BILL NO. 2082**

(Education Committee)

(At the request of the State Board of Higher Education)

AN ACT to amend and reenact sections 15-10-18.2 and 15-10-19.1 of the North Dakota Century Code, relating to tuition and tuition waivers for veterans and their dependents at state institutions of higher education.

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

**SECTION 1. AMENDMENT.** Section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-18.2. Definitions.**

1. "Dependent" for purposes of section 15-10-18.3 means:
  - a. A child, stepchild, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action; ~~or~~
  - b. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent has been a resident of this state and was a resident of this state at the time of death or determination of total disability of the veteran; or
  - c. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent establishes residency in this state and maintains that residency for a period of five years immediately preceding the child's or stepchild's enrollment at an institution under the control of the state board of higher education.
2. "Resident veteran" means a veteran who:
  - a. Was born in and lived in this state until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside this state, not having abandoned residence therein prior to entrance into the armed forces of the United States;

- c. Was born elsewhere but had resided within this state for at least six months prior to entrance into military service and had prior to or during such six-month period:
  - (1) Registered for voting, or voted in this state;
  - (2) Being an unemancipated minor during such period of residence, had lived with a parent or person standing in loco parentis who had acquired a residence as set forth in this section; or
  - (3) If not registered for voting in this state, not registered for voting in another state; or
- d. Has been a resident of this state for the ten years prior to the request for tuition waiver.

**SECTION 2. AMENDMENT.** Section 15-10-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-19.1. Nonresident and resident student for tuition purposes defined.**

1. A "nonresident student" for tuition purposes means any student other than a resident student.
2. A "resident student" for tuition purposes means:
  - a. A person whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
  - b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the beginning of the academic term;
  - c. A person who graduated from a North Dakota high school;
  - d. A full-time active duty member of the armed forces ~~or~~, a member of a North Dakota national guard unit, or a veteran as defined in section 37-01-40;
  - e. A spouse or dependent of a full-time active duty member of the armed forces or a member of a North Dakota national guard unit or of an employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes;
  - f. A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term; or

- g. A child, ~~spouse~~, widow, or widower of a veteran as defined in section 37-01-40 who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.
3. A temporary absence from the state for vacation or other special or temporary purposes may not be considered an abandonment of residency in this state, provided a residence is maintained in this state during the temporary absence. However, a student who leaves the state and resides in another state for a period of months is not considered a resident of this state during those months if the student does not maintain a place of residence in this state during the student's absence.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 159

### SENATE BILL NO. 2266 (Senators J. Lee, Seymour, Warner) (Representatives Delmore, Klein, Kreidt)

AN ACT to amend and reenact section 15-11-39 of the North Dakota Century Code, relating to the nursing education consortium; to provide a statement of legislative intent; to provide an appropriation; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>83</sup> **SECTION 1. AMENDMENT.** Section 15-11-39 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-11-39. Nursing education consortium - Continuing appropriation.**

1. The university of North Dakota college of nursing shall establish and administer a nursing education consortium for the purpose of addressing common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, with a focus on the specific needs of rural communities.
2. The consortium membership must include representation of the university of North Dakota college of nursing, the university of North Dakota center for rural health, and the board of nursing. In addition, each nursing program in this state which is approved by the board of nursing and each nursing program with approval pending which is located in this state must be invited to have representation in the consortium. The consortium members may invite interested persons to join the consortium membership or to participate in consortium activities. Interested persons may include the North Dakota nurses association nursing practice council leadership team; North Dakota hospital association; workforce partners, including job service North Dakota, the department of commerce division of workforce development, rural leadership of North Dakota, and the North Dakota workforce development council; employer partners; and other interested public and private parties. ~~The dean of the university of North Dakota college of nursing shall serve as chairman of the consortium from July 1, 2007, through December 31, 2009, during which the dean shall report to the legislative council. After 2009, consortium members shall select the chairman must be chosen by the members.~~
3. ~~If the consortium secures nonstate funds to cover the capital costs of a mobile clinical nursing simulation laboratory program, the consortium may establish a mobile clinical nursing simulation laboratory program to travel the state and provide clinical education for nursing students of~~

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<sup>83</sup> Section 15-11-39 was also amended by section 7 of House Bill No. 1436, chapter 482.

nursing education programs in the state and provide clinical education on current and emerging approaches to nursing excellence to medical facility staff.

4. ~~If the consortium establishes a mobile clinical nursing simulation laboratory program, the~~ The consortium shall establish advise university of North Dakota officials regarding strategies to address common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, specific needs of rural communities, and development of a strategic plan for the ongoing activities of the simulation laboratory program initiative, including goals and benchmarks for the implementation of the simulation laboratory program initiative.
5. 4. The consortium may contract with a third party in conducting the duties of the consortium and may seek, receive, and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the consortium. Any money received by the consortium as gifts, grants, or donations is appropriated as a continuing appropriation for the purpose of funding the simulation laboratory program and the activities of the consortium.

**SECTION 2. LEGISLATIVE INTENT - SIMULATION LABORATORY INITIATIVE.** It is the intent of the sixty-first legislative assembly that the funds appropriated in section 3 of this Act must be used by the university of North Dakota to support a simulation laboratory initiative that provides for a meaningful geographical distribution of basic simulation centers at nursing education sites to allow for regional use by students in urban and rural communities across the state. The initiative is intended to include a basic simulation model, essential equipment, and staff to serve the simulation laboratory in an integrated manner.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys from federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the university of North Dakota for the purpose of funding the costs of a simulation laboratory initiative under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009

Filed May 5, 2009

**CHAPTER 160****HOUSE BILL NO. 1386**

(Representatives Pinkerton, DeKrey, Kerzman)  
(Senators O'Connell, Taylor)

AN ACT to amend and reenact sections 15-12-20 and 23-36-03 of the North Dakota Century Code, relating to rabies determinations.

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

**SECTION 1. AMENDMENT.** Section 15-12-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-12-20. Veterinary diagnostic laboratory.** ~~There is hereby created and established a~~ The veterinary diagnostic laboratory ~~to be is~~ located at and is under the supervision and direction of the North Dakota state university of agriculture and applied science at Fargo. ~~Said veterinary diagnostic laboratory must be under the supervision and direction of the North Dakota state university. Said veterinary diagnostic~~ The laboratory shall conduct diagnosis of farm and domestic animals and poultry suspected of having diseases and ~~make reports thereon~~ report the findings as directed. The laboratory also shall perform rabies tests as required by section 23-36-03.

**SECTION 2. AMENDMENT.** Section 23-36-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-03. Enforcement authority.**

1. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any animal if the state health officer, or the state health officer's designee, has probable cause to believe the animal presents clinical symptoms of rabies.
2. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any wild mammal that is not currently vaccinated for rabies by a vaccine approved for use on that species by the national association of state public health veterinarians, inc., or any stray or unwanted domestic animal, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.
3. The department, or an agency acting on the department's behalf, may promptly seize and quarantine, or impound at the owner's expense, any dog, cat, or currently vaccinated ferret for a period of ten days, or any other domestic animal for a period not exceeding six months, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.

4. If an animal is humanely killed under this section, then at the request of the state health officer, or the state health officer's designee, the animal's brain must be tested for rabies by the state microbiology laboratory of the department if ~~there is possible human exposure to rabies and~~ or by the North Dakota veterinary diagnostic laboratory ~~in any other case~~. The department may conduct a diagnosis of farm animals, domestic animals, and wildlife that are suspected of having rabies and report findings as appropriate.
5. If an animal that has bitten or otherwise exposed an individual or another animal is not seized for testing, a law enforcement officer with jurisdiction over the place where the animal is located may determine whether to impound or quarantine the animal under subsection 3 and which method of confinement to use.
6. A licensed veterinarian shall examine, at the owner's expense, a confined animal on the first and last day of the animal's confinement and, at the request of the department or a local public health unit, at any other time during confinement.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 161****SENATE BILL NO. 2080**

(Education Committee)

(At the request of the State Board for Career and Technical Education)

AN ACT to create and enact a new section to chapter 15-20.4 of the North Dakota Century Code, relating to the operation of accreditation mills; to amend and reenact section 15-20.4-02, subsection 3 of section 15-20.4-03, subsection 1 of section 15-20.4-04, section 15-20.4-06, and subsection 1 of section 15-20.4-15 of the North Dakota Century Code, relating to authorizations to operate postsecondary educational institutions and false academic degrees; to repeal section 15-20.4-07 of the North Dakota Century Code, relating to negotiation of promissory instruments by postsecondary educational institutions; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 15-20.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-02. Exemptions.** The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Certain education provided through short-term programs as determined by the board.
5. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided the education is not advertised or promoted as leading toward educational credentials.
6. Postsecondary educational institutions established, operated, and governed by this or any other state or its political subdivisions, as determined by the board and any educational consortium that includes one or more of the institutions.
7. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
8. Schools of barbering regulated under chapter 43-04.

9. Schools of cosmetology regulated under chapter 43-11.
10. Schools of nursing regulated under chapter 43-12.1.
11. ~~Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.4 Native American colleges operating in this state, established by federally recognized Indian tribes.~~
12. ~~Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.~~
43. Postsecondary educational institutions not operating in this state.

**SECTION 2. AMENDMENT.** Subsection 3 of section 15-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Maintain a list of postsecondary educational institutions authorized to operate in this state under the provisions of this chapter. The list must be available for the information of the public ~~and must be sent to the superintendents of all school districts, county superintendents of schools, and guidance counselors certified by the department of public instruction.~~

**SECTION 3. AMENDMENT.** Subsection 1 of section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

1. All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution operating in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. ~~Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or Institutions issued a provisional authorization to operate must demonstrate a substantial good-faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate.~~

**SECTION 4. AMENDMENT.** Section 15-20.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.4-06. Refund of tuition fees.**

1. Postsecondary educational institutions shall refund tuition and other charges, other than a reasonable application fee, when written notice of cancellation is given by the student in accordance with the following schedule:
  - a. When notice is received prior to, or within seven days after completion of the first day of instruction, or after receipt of the first correspondence lesson by the institution, all tuition and other charges must be refunded to the student.

2. b. When notice is received prior to, or within thirty days after completion of the first day of instruction, or prior to the completion of one-fourth of the educational services, all tuition and other charges except twenty-five percent thereof must be refunded to the student.
3. c. When notice is received upon or after completion of one-fourth of the educational services, but prior to the completion of one-half of the educational services, all tuition and other charges except fifty percent thereof must be refunded to the student.
4. d. When notice is received upon or after the completion of fifty percent of the educational services, no tuition or other charges may be refunded to the student.
2. The provisions of this section do not prejudice the right of any student to recovery in an action against any postsecondary educational institution for breach of contract or fraud.
3. A postsecondary educational institution may implement a refund schedule that deviates from subsection 1 if the proposed refund schedule is more favorable to the student than the schedule described in subsection 1.

**SECTION 5. AMENDMENT.** Subsection 1 of section 15-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for a person to knowingly advertise to sell, issue, or manufacture a false academic degree. A person that violates this subsection is guilty of a class C felony. This subsection does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the advertisement.

**SECTION 6.** A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

**Unlawful to operate accreditation mill - Penalty.**

1. A person may not operate an accreditation mill in North Dakota.
2. As used in this section:
  - a. "Accreditation mill" means an accrediting entity that is not recognized by the United States department of education or the state board for career and technical education.
  - b. "Operate" includes to use an address, telephone number, facsimile number, or other contact point located in North Dakota.
3. A person that violates this section is guilty of a class C felony.

**SECTION 7. REPEAL.** Section 15-20.4-07 of the North Dakota Century Code is repealed.

## CHAPTER 162

### HOUSE BILL NO. 1080

(Education Committee)

(At the request of the Teachers' Fund for Retirement)

AN ACT to amend and reenact subsection 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, section 15-39.1-10.6, subsection 1 of section 15-39.1-19.1, and sections 15-39.1-20 and 15-39.1-30 of the North Dakota Century Code, relating to incorporation of federal law changes, procedure relating to benefit limitations, annual hour limit for retiree reemployment, and disclosure of confidential records under the teachers' fund for retirement.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>84</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~July August 1, 2007~~ July August 1, 2009. "Salary" includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on ~~July August 1, 2007~~ July August 1, 2009, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on ~~July August 1, 2007~~ July August 1, 2009. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
  - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.
  - b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.

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<sup>84</sup> Section 15-39.1-04 was also amended by section 1 of House Bill No. 1360, chapter 163.

- c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
- d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.
- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. Recruitment bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

**SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code in effect on ~~July~~ August 1, 2007 2009, and the regulations issued under that section, as applicable to governmental plans.

**SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on ~~July~~ August 1, 2007 2009, for governmental plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this amount provided under section 415(d) of the Internal Revenue Code subsequent to August 1, 2009. If a member's benefit is limited by these provisions at the time of retirement or in any subsequent year, the benefit paid in any following calendar year may be increased to reflect all cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year payments commenced, but not to more than would have been payable in the absence of the limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by a plan amendment, after the commencement of payments, the member's benefit may not exceed the maximum dollar benefit under section 415(b)(1)(A) of the Internal Revenue Code, adjusted for the commencement age and form of payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the reduction must be

made pro rata between the two plans, in proportion to the member's service in each plan.

**SECTION 4. AMENDMENT.** Subsection 1 of section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:
  - a. (1) Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - b. (2) Retiree reemployment of ten months, annual limit is eight hundred hours;
  - c. (3) Retiree reemployment of eleven months, annual limit is nine hundred hours; or
  - d. (4) Retiree reemployment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.
- c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment. Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 on those earnings received by the retired member after reaching the annual hour limit.
- e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member both before and after the retired member reaches the annual hour limit.

**SECTION 5. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may,

after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. A member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in effect on July August 1, 2007 2009.

**SECTION 6. AMENDMENT.** Section 15-39.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-30. Confidentiality of records.** All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the teacher has given written consent to have the information disclosed.
2. A person legally representing the teacher, upon proper proof of representation, and unless the teacher specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit, years of age, employer and employee contribution amounts, and salary. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal law. Any information provided to the member's participating employer under this subsection must remain confidential except as provided in subsection 6.
5. The administrative staff of the public employees retirement system for purposes relating to membership and benefits determination.
6. State or federal agencies for the purpose of validating member eligibility or employer compliance with existing state or federal law.
7. Member interest groups approved by the board, limited to information concerning the member's death.
8. A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.
9. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 15-39.1-12.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.

10. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.
11. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.
12. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.
13. A person if the information relates to an employer service purchase, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase. Information identified under this subsection may only be obtained from the member's employer.

Approved April 15, 2009  
Filed April 15, 2009

## CHAPTER 163

### HOUSE BILL NO. 1360

(Representatives R. Kelsch, Porter, Rust)  
(Senators Flakoll, Freiborg)

AN ACT to create and enact a new section to chapter 15.1-09.1 of the North Dakota Century Code, relating to the rights of regional education association employees; and to amend and reenact subsection 11 of section 15-39.1-04, section 15-39.1-23, subsection 17 of section 65-01-02, and section 65-04-04 of the North Dakota Century Code, relating to the rights of regional education association employees, the inclusion of teachers employed by regional education associations in the teachers' fund for retirement, to provide a date by which workforce safety and insurance premiums paid by regional education associations are due, and to reconcile references to other education entities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>85</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11. "Teacher" means:
  - a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, multidistrict special education unit, area career and technology center, regional education association, school board, or other governing body of a school district of this state under a third-party contract.
  - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North

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<sup>85</sup> Section 15-39.1-04 was also amended by section 1 of House Bill No. 1080, chapter 162.

Dakota high school activities association who are members of the fund on July 1, 1995.

- c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

**SECTION 2. AMENDMENT.** Section 15-39.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-23. Penalties for failure to make required reports and payments.**

Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition, a school district, multidistrict special education unit, area career and technology center, and regional education association may not share in the apportionment of any money from the state for any year unless the school ~~board, or an officer thereof, district, multidistrict special education unit, area career and technology center, or regional education association~~ has made the reports required by the board as permitted by this chapter, and has paid over for credit to the fund the amounts required to be paid under this chapter.

**SECTION 3.** A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

**Rights of employees.** Any individual employed by the board of a regional education association has the same statutory rights as those accorded to an individual employed by a public school district for the same purpose.

<sup>86</sup> **SECTION 4. AMENDMENT.** Subsection 17 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:

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<sup>86</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1061, chapter 607, and section 1 of House Bill No. 1151, chapter 608.

- a. The state and all political subdivisions thereof.
- b. All public and quasi-public corporations in this state.
- c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
- d. The legal representative of any deceased employer.
- e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
- f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
- g. The managers of a limited liability company.
- h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- j. A multidistrict special education unit.
- k. An area career and technology center.
- l. A regional education association.

**SECTION 5. AMENDMENT.** Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed.** Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating

different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

Approved May 1, 2009

Filed May 5, 2009

**CHAPTER 164****SENATE BILL NO. 2277**

(Senators O'Connell, Christmann, Oehlke)  
(Representatives Hawken, L. Meier, Schneider)

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to supplemental retiree benefit payments under the teachers' fund for retirement.

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

**SECTION 1.** A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

**Supplemental retiree benefit payment.** An individual who retired before January 1, 2009, and is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 on December 1, 2009, is entitled to receive a supplemental payment from the fund. The supplemental payment is equal to an amount determined by taking twenty dollars multiplied by the member's number of years of service credit plus fifteen dollars multiplied by the number of years since the member's retirement as of January 1, 2009. The supplemental payment may not exceed the greater of ten percent of the member's annual annuity or seven hundred fifty dollars. The board shall make the supplemental payment in December 2009.

Approved May 7, 2009  
Filed May 19, 2009

## CHAPTER 165

### SENATE BILL NO. 2079

(Education Committee)

(At the request of the State Board of Higher Education)

AN ACT to amend and reenact sections 15-52-01, 15-52-02, 15-52-05, 15-52-07, 15-52-08, 15-52-09, 15-52-15, and 15-52-29 of the North Dakota Century Code, relating to the university of North Dakota school of medicine and health sciences.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-52-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-01. Establishment School of medicine and health sciences.** ~~There is hereby established at the university of North Dakota a North Dakota state medical center, the purpose of which must be to provide facilities for the coordination, improvement, expansion, and unification of health and welfare activities of the state and its agencies and its political subdivisions and private medical practitioners. The primary purpose of the university of North Dakota school of medicine and health sciences is to educate physicians and other health professionals and to enhance the quality of life in North Dakota. Other purposes include the discovery of knowledge that benefits the people of this state and enhances the quality of their lives.~~

**SECTION 2. AMENDMENT.** Section 15-52-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-02. Control and operation.** ~~The control and operation of the university of North Dakota state medical center school of medicine and health sciences is the duty and responsibility of the administrative authorities of the university of North Dakota and its medical school under the policies of the state board of higher education or its successor in authority.~~

**SECTION 3. AMENDMENT.** Section 15-52-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-05. Medical center facilities available to whom Facilities.** ~~The university authorities shall make the facilities of such North Dakota state medical center the university of North Dakota school of medicine and health sciences available to all agencies of the state, federal, and local governments engaged in health and welfare activities to the fullest extent possible within the limits of a complete and coordinated program for the use thereof on terms commensurate with the cost of services rendered and facilities furnished. The work of the medical school and the North Dakota state medical center school of medicine and health sciences must be coordinated with the work of the other departments of the university of North Dakota. Means must be provided whereby regularly enrolled students in other schools or departments of the university of North Dakota may, upon approval of the dean of such other school or department, enroll in elective courses in the medical school and receive credit therefor in the school or department in which they are regularly enrolled. Medical students may enroll in other departments and schools. Such action must be taken as may serve to make both the North Dakota state~~

~~medical center~~ school of medicine and health sciences and the other departments and schools of the university of North Dakota more efficient and responsive to needs of the people through the mutual interchange of facilities, and service, wherever possible.

**SECTION 4. AMENDMENT.** Section 15-52-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-07. Political subdivisions shall use facilities of center.** All agencies of the state, counties, and municipalities in any way concerned with health, medical care, or public welfare, shall make the fullest possible use of the facilities and services of the ~~North Dakota state medical center~~ university of North Dakota school of medicine and health sciences and shall pay therefor the established fees and charges, and may contribute to the ~~North Dakota state medical center~~ school of medicine and health sciences specific fees or monthly payments for specific facilities and services furnished.

**SECTION 5. AMENDMENT.** Section 15-52-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-08. Center may accept grants, gifts, and rentals - Power to contract.** The ~~North Dakota state medical center~~ university of North Dakota school of medicine and health sciences or the university of North Dakota for the use and benefit of ~~said North Dakota state medical center~~ the school of medicine and health sciences is specifically authorized to accept and use for the purposes of ~~said North Dakota state medical center~~ the school of medicine and health sciences grants, gifts, contributions, fees, rentals, and other payments from any foundation, individual, firm, corporation, limited liability company, institution, public or private agency, or from the federal government or any of its departments, agencies, or bureaus; and may, within the limits of its funds available, enter into such agreements as may be necessary to secure buildings, supplies, maintenance, material, and equipment; and may contract with public or private agencies or persons for the rental or use of facilities, services, and equipment not owned by ~~such North Dakota state medical center~~ the school of medicine and health sciences.

**SECTION 6. AMENDMENT.** Section 15-52-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-09. Expenditure of proceeds of one-mill levy authorized - Limitation.** The proceeds of the one-mill tax levy established by section 10 of article X of the Constitution of North Dakota, together with any other funds that may be received by the state treasurer, from time to time, for the benefit of the North Dakota state medical center, must be expended to establish, develop, and maintain ~~said North Dakota state medical center~~ the university of North Dakota school of medicine and health sciences, as provided in this chapter, by the issuance of state warrants drawn on such funds by the director of the office of management and budget.

<sup>87</sup> **SECTION 7. AMENDMENT.** Section 15-52-15 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>87</sup> Section 15-52-15 was also amended by section 2 of Senate Bill No. 2077, chapter 167.

**15-52-15. Duties related to loan fund.** ~~It is the duty of the~~ The university to ~~shall~~ receive and pass upon, and ~~to~~ allow or disallow, all applications for loans submitted by qualified applicants who desire to complete an education in medicine or dentistry for the purpose of entering medical or dental practice in ~~the state of~~ North Dakota. ~~It is also the duty of the university to compile a list of cities, towns, and other municipalities in this state without a qualified physician or dentist or with an insufficient number of qualified physicians or dentists, and to endeavor to supply physicians or dentists to such cities, towns, and other municipalities.~~

**SECTION 8. AMENDMENT.** Section 15-52-29 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-29. Training of psychiatric personnel - Scholarships.** ~~The North Dakota state medical center~~ university of North Dakota school of medicine and health sciences, under the policies of the state board of higher education, ~~is hereby authorized and directed to shall~~ provide or encourage means for providing for the training of such psychiatrists and other psychiatric personnel as may be necessary to properly staff state institutions and agencies providing services in the field of mental health. ~~The North Dakota medical center is authorized to~~ school of medicine and health sciences may execute contracts with any suitable public or private agency providing such training services and facilities and to pay for such services from funds of the ~~medical center~~ school of medicine and health sciences as provided in section 15-52-09.

~~The board is specifically authorized and directed, acting through the medical center, to provide scholarships in such amounts as may be necessary for the use of qualified physicians during periods in which such physicians are in training in the field of psychiatry. Such scholarships must be conditioned upon service upon the staffs of state institutions and agencies by such psychiatrists after the completion of their formal training for such term as the board may prescribe.~~

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 166****SENATE BILL NO. 2081**

(Education Committee)

(At the request of the State Board of Higher Education)

AN ACT to amend and reenact sections 15-52-03, 15-52-04, 15-52-30, and 15-52-31 of the North Dakota Century Code, relating to the university of North Dakota school of medicine and health sciences advisory council.

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

<sup>88</sup> **SECTION 1. AMENDMENT.** Section 15-52-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-03. Medical center School of medicine and health sciences advisory council - Members, terms, meetings.**

1. To assure the proper coordination and integration of the North Dakota state medical center university of North Dakota school of medicine and health sciences with all other health and welfare activities of the state, a permanent medical center school of medicine and health sciences advisory council is established to advise, consult, and make recommendations to the university administration, and to the several agencies represented on the council concerning the program of the North Dakota state medical center, the adaptation of the medical center to the needs of the state and to the requirements and facilities of the several agencies involved, and the use of the North Dakota state medical center and its facilities by the various institutions and agencies of the state and its political subdivisions perform the duties in section 15-52-04.
2. The council consists of fourteen fifteen members:
  - a. (1) Two members of the senate, one of whom must be from the majority party and one of whom must be from the minority party, selected by the chairman of the legislative council; and
  - (2) Two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party, to be selected by the chairman of the legislative council;
  - b. One member selected by each of the following:
    - (1) The department of human services;
    - (2) The state board of higher education;

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<sup>88</sup> Section 15-52-03 was also amended by section 97 of House Bill No. 1436, chapter 482.

- (3) The state department of health;
  - (4) The North Dakota medical association;
  - (5) The North Dakota healthcare association; ~~and~~
  - (6) The veterans administration hospital in Fargo; and
  - (7) The university of North Dakota center for rural health; and
- c. ~~One member~~ Four members selected by the dean of the university of North Dakota ~~medical~~ school of medicine and health sciences, one from each of the four ~~campus areas~~ campuses of the ~~medical~~ school of medicine and health sciences with headquarters in Bismarck, Fargo, Grand Forks, and Minot.
3. The representatives named by the state agencies and boards must be selected to serve as members of the ~~medical center~~ advisory council for periods of at least one year, but may not serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota healthcare association shall serve a term of three years or until their successors are named and qualified.
  4. The council shall name its own chairman and the dean of the university of North Dakota ~~medical~~ school of medicine and health sciences shall serve as executive secretary of the council. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration; ~~to consider plans and programs of action for the North Dakota state medical center and make its recommendations to the several agencies of the state and political subdivisions involved and to the legislative assembly.~~

**SECTION 2. AMENDMENT.** Section 15-52-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-04. Duties of council.** ~~The medical center advisory council shall study, consider, and formulate plans for facilitating and implementing, through the North Dakota state medical center, a unified program for the improvement and maintenance of the health of the people of the state in all of its phases. The study must include specifically ways and means of bringing about the complete training of adequate numbers of qualified physicians and surgeons for the people of the state, both in the general practice of medicine and surgery and the field of public health, of allied health professionals, and all other personnel concerned with the improvement and preservation of the health of the people of this state.~~

1. The advisory council, in consultation with the school of medicine and health sciences and the other agencies, associations, and institutions represented on the advisory council, shall study and make recommendations regarding the strategic plan, programs, and facilities of the school of medicine and health sciences.
2. Biennially, the advisory council shall submit a report, together with its recommendations, to the agencies, associations, and institutions represented on the advisory council, to the university of North Dakota, and to the legislative council.

3. a. The report must describe the advisory council's recommendations regarding the strategic plan, programs, and facilities of the school of medicine and health sciences as developed under subsection 1. The recommendations for implementing strategies through the school of medicine and health sciences or other agencies and institutions must:
- (1) Address the health care needs of the people of the state; and
  - (2) Provide information regarding the state's health care workforce needs.
- b. The recommendations required under subdivision a may address:
- (1) Medical education and training;
  - (2) The recruitment and retention of physicians and other health care professionals;
  - (3) Factors influencing the practice environment for physicians and other health care professionals;
  - (4) Access to health care;
  - (5) Patient safety;
  - (6) The quality of health care and the efficiency of its delivery; and
  - (7) Financial challenges in the delivery of health care.
4. The council may consult with any individual or entity in performing its duties under this section.

**SECTION 3. AMENDMENT.** Section 15-52-30 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-30. Contracts or agreements authorized - Legislative intent.**

1. The state board of higher education ~~upon the recommendation of the medical center advisory council~~ is hereby authorized to enter into contracts or agreements, both interstate and intrastate, to provide medical education opportunities. These contracts and agreements must be made within the limits of available legislative appropriation and may be for such periods of time as the state board of higher education deems necessary.
2. It is ~~hereby declared to be~~ the intent of the legislative assembly that the state of North Dakota, through its state board of higher education, provide for a comprehensive program of medical education leading to a doctor of medicine degree.

**SECTION 4. AMENDMENT.** Section 15-52-31 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-31. Admission of students - Qualifications.** The faculty of the school of medicine and health sciences at the university of North Dakota may, with the ~~approval~~ advice of the ~~medical center~~ school of medicine and health sciences advisory council and with the approval of the state board of higher education, adopt such rules and regulations governing the education and residency qualifications of applicants for admission to the ~~medical~~ school of medicine and health sciences as it deems necessary and proper.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 167****SENATE BILL NO. 2077**

(Education Committee)

(At the request of the State Board of Higher Education)

AN ACT to amend and reenact sections 15-52-10, 15-52-15, 15-52-16, 15-52-18, 15-52-20, 15-52-26, and 15-52-27 of the North Dakota Century Code, relating to the university of North Dakota school of medicine and health sciences revolving loan fund.

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

**SECTION 1. AMENDMENT.** Section 15-52-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-10. Medical center School of medicine and health sciences revolving loan fund.** ~~There is hereby created a medical center~~ The school of medicine and health sciences loan fund ~~which~~ must be administered as a revolving loan fund by the university of North Dakota under the direction and control of the state board of higher education. As used ~~hereafter~~ in this chapter, the word "university" means the university of North Dakota under the direction and control of the state board of higher education. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans to qualified applicants.

<sup>89</sup> **SECTION 2. AMENDMENT.** Section 15-52-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-15. Duties related to loan fund.** ~~It is the duty of the~~ The university to shall receive and pass upon, and ~~to~~ allow or disallow, all applications for loans submitted by qualified applicants who desire to complete an education in medicine or dentistry for the purpose of entering medical or dental practice ~~in the state of North Dakota.~~ It is also the duty of the university to compile a list of cities, towns, and other municipalities in this state without a qualified physician or dentist or with an insufficient number of qualified physicians or dentists, and to endeavor to supply physicians or dentists to such cities, towns, and other municipalities.

**SECTION 3. AMENDMENT.** Section 15-52-16 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-16. Qualifications of loan applicants.** An applicant is deemed qualified only if the applicant:

1. ~~Has been a resident of this state at least one year before the date of entering medical school or dental school;~~

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<sup>89</sup> Section 15-52-15 was also amended by section 7 of Senate Bill No. 2079, chapter 165.

2. Has successfully completed the first year of the curriculum in medicine at the university of North Dakota or has successfully completed the first year of the curriculum in dentistry in an accredited dental school Meets the criteria as a resident for tuition purposes as defined by section 15-10-19.1; and
- 3- 2. Can Is enrolled as a medical student of the university of North Dakota school of medicine and health sciences or can present to the university satisfactory proof that the applicant is enrolled as a student in the second, third, or fourth year of a school of medicine accredited by the liaison committee on medical education or of a school of dentistry accredited by the commission on dental accreditation, or will be enrolled upon payment of tuition.

**SECTION 4. AMENDMENT.** Section 15-52-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-18. Amount of loans.** Loans may be granted to qualified applicants by the university in amounts not in excess of six ten thousand dollars each year for the purpose of completing the second, third, and fourth year of medical or dental study in an accredited school of medicine or dentistry.

**SECTION 5. AMENDMENT.** Section 15-52-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-20. Loan conditions.** A loan granted by the university under section 15-52-10 and sections 15-52-15 through 15-52-28 must be upon the condition that the full amount of the loan must be repaid in cash with interest not to exceed six percent annually from the date of each payment pursuant to a loan agreement. The medical center school of medicine and health sciences advisory council may annually establish an interest rate at a level lower than six percent. The repayment must be in yearly installments on a schedule set by the university with the first installment becoming due and payable one year from the date on which the applicant begins practice, but may not exceed five six years from the date of graduation or one year from the date of graduation from a dental school if a dental student.

**SECTION 6. AMENDMENT.** Section 15-52-26 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-26. Availability of funds.** The state board of higher education is hereby directed and authorized to make available to the university, from the portion of the proceeds of the one-mill levy provided by section 10 of article X of the Constitution of North Dakota as the state board of higher education shall have retained in its possession pursuant to the provisions of section 15-52-09 for the purpose of establishing third-year and fourth-year courses of medicine at the university of North Dakota, such funds as may be required for the operation of the medical center school of medicine and health sciences revolving loan fund, but not in excess of one hundred thousand dollars in any one year.

**SECTION 7. AMENDMENT.** Section 15-52-27 of the North Dakota Century Code is amended and reenacted as follows:

**15-52-27. Purposes of loan fund.** The purposes of section 15-52-10 and sections 15-52-15 through 15-52-28 are hereby declared to be to develop and maintain the North Dakota state medical center school of medicine and health sciences by making it possible for all qualified students attending such center school to complete their education in medicine or in the case of dental students who are residents of the state of North Dakota to complete their education in dentistry.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 168****SENATE BILL NO. 2166**

(Senators J. Lee, Dever, Heckaman)  
(Representatives Grande, Keiser, Koppelman)

AN ACT to amend and reenact subsection 2 of section 15-62.2-00.1 and subsection 2 of section 15-62.2-01 of the North Dakota Century Code, relating to financial assistance for students; and to repeal chapter 15-62.3 of the North Dakota Century Code, relating to the tuition assistance grant program.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

2. "Eligible institution" means an accredited public or ~~nonprofit~~ private postsecondary institution located in this state and offering a program of instruction at least equal in length to two academic years.

**SECTION 2. AMENDMENT.** Subsection 2 of section 15-62.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. A student must be in substantial need of financial assistance to receive grants under the student financial assistance program. A grant must be paid directly to an eligible institution on behalf of a student.

**SECTION 3. REPEAL.** Chapter 15-62.3 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 169****HOUSE BILL NO. 1399**

(Representatives Onstad, Froelich, Vig)  
(Senators Heckaman, Marcellais, Warner)

AN ACT relating to the preservation of American Indian languages; to provide a legislative council report; to provide an appropriation; and to provide a continuing appropriation.

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

**SECTION 1. American Indian language preservation committee - Membership - Meetings.**

1. The American Indian language preservation committee consists of:
  - a. The executive director of the Indian affairs commission, who shall serve as the chairman;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. An individual employed as a faculty member at a tribal college, appointed by the governor;
  - d. The director of the state historical society;
  - e. The chairman of the North Dakota humanities council;
  - f. The chairman of the university of North Dakota department of Indian studies or the chairman's designee; and
  - g. One individual with experience in the development of curriculum pertaining to and the teaching of American Indian languages at the elementary or high school levels, appointed by the governor.
2. The committee shall meet at least quarterly, at the call of the chairman.

**SECTION 2. Duties.** The committee shall:

1. Develop a process for the orderly preservation of American Indian languages spoken by the members of tribes located in this state, including:
  - a. The creation or acquisition of audio recordings, picture dictionaries, and pronunciation guides;
  - b. The translation of existing materials; and
  - c. The acquisition, development, and dissemination of instructional materials for elementary and high school students, individuals enrolled in institutions of higher education, and other adults;

2. Pursue working relationships aimed at American Indian language preservation with public and private sector entities, including institutions of higher education, in this state and in other states and provinces; and
3. Seek the active participation of American Indians residing in this state on an individual and a tribal basis.

**SECTION 3. Powers - Continuing appropriation.**

1. The committee may:
  - a. Accept gifts, grants, and donations of money, property, and services to carry out this Act;
  - b. Expend moneys received under this section to carry out this Act; and
  - c. Contract with any person for any purpose related to this Act.
2. Any moneys received by the committee under this section are appropriated to the committee on a continuing basis.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys from the federal fiscal stabilization - other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$18,000, or so much of the sum as may be necessary, to the Indian affairs commission for the purpose of providing matching funds to the American Indian language preservation committee, for the biennium beginning July 1, 2009, and ending June 30, 2011. Each dollar provided to the committee under this section is contingent upon the committee demonstrating that it has matched each \$1 to be provided under this section with \$3, or the equivalent thereof in-kind, from nonstate sources for the purposes set forth in this Act.

**SECTION 5. LEGISLATIVE COUNCIL REPORT.** Before September 2010, the chairman of the American Indian language preservation committee shall provide a report to the legislative council regarding the work of the committee, together with any recommendations for ongoing preservation efforts.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 170****HOUSE BILL NO. 1394**

(Representatives Kasper, D. Johnson, R. Kelsch)  
(Senators Flakoll, Freborg, Wardner)

AN ACT to amend and reenact sections 15-70-01, 15-70-04, 15-70-05, and 57-51.1-07.4 of the North Dakota Century Code, relating to the provision of financial assistance to tribally controlled community colleges; to provide a statement of legislative intent; to provide an appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-70-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-70-01. Definitions.** ~~In~~ As used in this chapter, ~~unless the context otherwise requires:~~

1. "Full time" means that a student is enrolled for at least twenty-four semester hours during an academic year.
2. "Nonbeneficiary student" means a resident of North Dakota who is enrolled in a tribally controlled community college but is not an enrolled member of a federally recognized Indian tribe ~~nor a biological child of a living or deceased member of an Indian tribe.~~
- 2- 3. "Tribally controlled community college" means an institution of higher education in this state which is formally controlled or has been formally sanctioned or chartered by the governing body of an Indian tribe, or any combination of federally recognized Indian tribes.

**SECTION 2. AMENDMENT.** Section 15-70-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-70-04. Submission of grant application - Distribution of grants.** In order to qualify for a grant under this chapter, an institution shall submit an application in the manner required by the state board of higher education. The application must document the enrollment status of each student on whose account financial assistance under this chapter is sought. If an application is approved, the board shall distribute to each tribally controlled community college, during each year of the biennium, ~~four~~ five thousand five hundred eighty-one ~~four~~ four dollars for ~~each per full-time equivalent nonbeneficiary student on a full-time equivalent basis.~~ If the amount appropriated is insufficient, the board shall distribute a prorated amount ~~per full-time equivalent nonbeneficiary student on a full-time equivalent basis.~~

**SECTION 3. AMENDMENT.** Section 15-70-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-70-05. Reporting by recipient institutions - Failure to report.** Each institution receiving a grant under this chapter shall annually provide to the state board of higher education an accurate and detailed account of ~~submit to the~~

legislative council a report detailing the expenditures of the grant funds received by the institution under this chapter ~~and~~, a copy of the institution's latest audit report, and documentation of the enrollment status ~~and ethnic status~~ of each student on whose account financial assistance under this chapter is sought. Any institution that fails to meet the requirements of this section is ineligible to receive future grants under this chapter until the institution submits the required information.

<sup>90</sup> **SECTION 4. AMENDMENT.** Section 57-51.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.4. Separate allocation of state share of collections from reservation development.** Notwithstanding any other provision of law, the state treasurer shall transfer to the permanent oil tax trust fund the first seven hundred thousand dollars of the state's share of tax revenues under this chapter from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation ~~drilled and completed~~ after June 30, ~~2007~~ 2009.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$700,000, or so much of the sum as may be necessary, to the state board of higher education for the purpose of providing grant assistance to tribally controlled community colleges, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. CONTINGENT MONEY.** If any money appropriated to the state board of higher education for grant assistance to tribally controlled community colleges remains after the board complies with all statutory payment obligations imposed under this Act, the state board shall distribute a prorated amount per full-time equivalent nonbeneficiary student.

**SECTION 7. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that the amendment of section 57-51.1-07.4 by section 4 of this Act is an independent law for purposes of section 1-02-09 and prevails over any repeal of section 57-51.1-07.4 enacted by the sixty-first legislative assembly.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2009  
Filed April 23, 2009

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<sup>90</sup> Section 57-51.1-07.4 was repealed by section 1 of Senate Bill No. 2088, chapter 582.

# ELEMENTARY AND SECONDARY EDUCATION

## CHAPTER 171

### HOUSE BILL NO. 1378

(Representatives R. Kelsch, Bellew, Hatlestad, D. Johnson)  
(Senators Bakke, G. Lee)

AN ACT to amend and reenact sections 15.1-06-01 and 15.1-22-02 of the North Dakota Century Code, relating to the age of admission to schools; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15.1-06-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-06-01. Schools free and accessible - School ages.**

1. Each public school must be free, open, and accessible at all times to any child provided:
  - a. The child may not enroll in grade one unless the child reaches the age of six before ~~September~~ August first of the year of enrollment;
  - b. The child may not enroll in kindergarten unless the child reaches the age of five before ~~September~~ August first of the year of enrollment; and
  - c. The child has not reached the age of twenty-one before ~~September~~ August first of the year of enrollment.
2. Notwithstanding ~~the provisions~~ of subsection 1, a school district may not enroll in grade one a child who is not six years old before ~~September~~ August first, unless the child will be six years old before ~~January~~ December first and:
  - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate ~~special talents or abilities~~ academic, social, and emotional readiness; or
  - b. The child has completed an approved kindergarten program.
3. Notwithstanding subsection 1, a school district may not enroll in kindergarten a child who is not five years old before ~~September~~ August first unless the child will be five years old before ~~January~~ December first and the child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and

administered by the school district, can demonstrate ~~special talents or abilities~~ academic, social, and emotional readiness.

**SECTION 2. AMENDMENT.** Section 15.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-22-02. Public kindergarten - Requirements.** A school district operating a kindergarten:

1. May not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the education standards and practices board or approved by the education standards and practices board.
2. Shall submit to the superintendent of public instruction and follow a developmentally appropriate curriculum.
3. Shall provide at least the equivalent of thirty full days of instruction, on a half-day or full-day basis, as determined by the school board.
4. Shall apply all municipal and state health, fire, and safety requirements to the kindergarten.
5. May not enroll a child who is not five years old ~~by midnight August thirty-first~~ before August first of the year of enrollment, unless the child will be five years old ~~on or before December thirty-first~~ first and:
  - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate ~~special talents or abilities~~ academic, social, and emotional readiness; or
  - b. The child has been enrolled in another approved kindergarten.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2010.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 172****SENATE BILL NO. 2357**

(Senators Flakoll, Freborg, J. Lee)  
(Representatives Clark, R. Kelsch, Thoreson)

AN ACT to amend and reenact section 15.1-15-08 of the North Dakota Century Code, relating to discharge for cause.

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

**SECTION 1. AMENDMENT.** Section 15.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-15-08. Discharge for cause - Hearing.**

1. If the board of a school district contemplates the discharge for cause of an individual employed as a teacher, a principal, or as an assistant or associate superintendent, ~~prior to~~ before the expiration of the individual's contract, the board shall ~~provide written notice to the individual at least ten days prior to the discharge date.~~ The notice must:
  - a. ~~State the date and time at which the board will conduct a special hearing to address charges against the individual; and~~
  - b. ~~State that the individual may demand a list of the charges.~~
2. ~~If the individual demands petition the director of the office of administrative hearings for appointment of an administrative law judge to preside over the hearing. The administrative law judge shall set the time and place of the hearing, direct the board to publish notice of the hearing, and direct the board to provide to the individual a list of charges under subsection 1, the board shall furnish the list to the individual at least five days before the hearing.~~
3. ~~If the individual notifies the board in writing at least two days before the hearing that the individual intends to contest the charges, the board shall produce evidence of the charges at the hearing, together with witnesses who are subject to cross-examination by the individual or by a representative of the individual.~~
4. ~~If a witness is a minor and if it is the wish of the witness or the witness's parent, the witness may be accompanied by legal counsel and a parent.~~
5. ~~At the hearing, the individual may produce evidence and witnesses to refute any charges. Any witnesses produced by the individual are subject to cross-examination.~~
6. 2. ~~The~~ Except as otherwise provided in this section, the hearing must be conducted in accordance with chapter 28-32.

- 7- 3. Unless otherwise agreed to by the board and the individual, the administrative law judge shall close the hearing must be conducted as an executive session of the board, except that:
- a. The individual may invite to the hearing any two representatives and the individual's spouse or one other family member; and
  - b. The board may invite to the hearing any two representatives, the school business manager, and the school district superintendent, except for the parties, their legal representatives, witnesses, three invitees requested by the individual, and three invitees requested by the board.
- 8- 4. The individual subject to the discharge may request one continuance. If a continuance is requested, the board of the school district administrative law judge shall grant the continuance not in excess of seven days. Upon a showing of good cause by the individual, the board administrative law judge may grant a continuance in excess of seven days.
- 9- 5. No cause of action for libel or slander may be brought regarding any communication made in an executive session of the board held for the purposes provided in this section.
6. At the conclusion of the hearing, the administrative law judge shall provide all evidence presented at the hearing to the board in order that the board may make a determination regarding the discharge.
7. A determination of the board under this section may be appealed to the district court.
8. All costs of the services provided by the administrative law judge, including reimbursement for expenses, are the responsibility of the board.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 173****SENATE BILL NO. 2289**

(Senators Flakoll, Freborg, J. Lee)

(Representatives Clark, R. Kelsch, Thoreson)

AN ACT to amend and reenact section 15.1-19-02 of the North Dakota Century Code, relating to corporal punishment.

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

**SECTION 1. AMENDMENT.** Section 15.1-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-19-02. Corporal punishment - Prohibition - Consistent policies.**

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.
2. This section does not prohibit a school district employee from using the degree of force necessary:
  - a. To quell a physical disturbance that threatens physical injury to an individual or damage to property;
  - b. To quell a verbal disturbance;
  - c. For self-defense;
  - d. For the preservation of order; or
  - e. To obtain possession of a weapon or other dangerous object within the control of a student.
3. For purposes of this section, corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a student is not corporal punishment. A school board may not expand through policy the definition of corporal punishment beyond that provided by this subsection.
4. a. The board of each school district shall develop policies setting forth standards for student behavior and procedures to be followed if the standards are not met, and guidelines detailing how all incidents are to be investigated.

- b. The board shall ensure that the policies, procedures, and guidelines applicable to all elementary schools in the district are identical, that the policies, procedures, and guidelines applicable to all middle schools in the district are identical, and that the policies, procedures, and guidelines applicable to all high schools in the district are identical.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 174****SENATE BILL NO. 2217**

(Senators Cook, Bakke, Wardner)  
(Representatives D. Johnson, R. Kelsch, Mueller)

AN ACT to amend and reenact section 15.1-20-03 of the North Dakota Century Code, relating to compulsory school attendance; to provide for a legislative council report; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 15.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-20-03. Compulsory attendance law - Enforcement - Penalty.**

1. Each teacher and administrator is charged with the enforcement of compulsory school attendance provisions. The compulsory school attendance provisions are applicable to any child who is offered school facilities by a school district, regardless of whether or not the child actually resides in the district. Each individual listed in this section shall investigate any alleged violation of the compulsory attendance provisions and shall obtain from the parent of any child not attending school in accordance with the requirements of this chapter the reason, if any, for the absence. In any school district not having a district superintendent, the county superintendent of schools must be notified of any allegation regarding the violation of compulsory attendance provisions and the county superintendent shall report the allegation to the state's attorney of the county. In all other districts, the school district superintendent or the principal of the child's school shall report to the state's attorney of the county the facts in connection with any alleged violation of the compulsory attendance provisions. The state's attorney may petition a court, pursuant to chapter 27-20, for a determination as to whether a child is educationally deprived.
2. If a teacher determines that a child is not in attendance as required by this chapter and that the child has not been excused in accordance with this chapter or in accordance with the school's or school district's policies, the teacher shall notify the administrator of the school.
3. Upon receiving notice of a child's absence under subsection 2, the administrator shall initiate an investigation into the cause of the absence. If the administrator has reason to believe that the person having responsibility for the child has failed to ensure that the child is in attendance, the administrator shall refer the matter to the local law enforcement agency.
4. Any person who fails to ensure that a child is in attendance as required by this chapter is guilty of an infraction for a first offense and is guilty of a class B misdemeanor for a second or subsequent offense.

5. In a prosecution for an offense under this section, it is an affirmative defense if the person responsible for ensuring that the child is in attendance has made substantial and reasonable efforts to comply with the requirements of this section, but is unable to compel the child to attend school. If the court determines that the affirmative defense is valid, the court shall dismiss the complaint against the person.

**SECTION 2. ADVISORY COMMITTEE ON TRUANCY - REPORT TO LEGISLATIVE COUNCIL.** The superintendent of public instruction shall appoint an advisory committee on truancy. The committee must include representatives of school administrators, teachers, social workers, law enforcement, and state's attorneys. The committee shall review existing school district policies and responses to truancy and shall explore the desirability and feasibility of making available counseling and intervention options and alternative learning environments; the effectiveness of imposing punitive measures on the truant students, on the parents of truant students, or both; and any other solutions designed to decrease incidences of truancy. Before September 1, 2010, the committee shall report its findings and recommendations to the legislative council.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 175****HOUSE BILL NO. 1400**

(Representatives R. Kelsch, Mueller, Wall)  
(Senators Flakoll, Holmberg, Taylor)

AN ACT to create and enact two new sections to chapter 15-20.1, two new sections to chapter 15.1-02, two new sections to chapter 15.1-06, two new sections to chapter 15.1-07, a new section to chapter 15.1-09, a new section to chapter 15.1-13, chapter 15.1-18.2, sections 15.1-21-02.3, 15.1-21-02.4, 15.1-21-02.5, 15.1-21-02.6, and 15.1-21-02.7, seven new sections to chapter 15.1-21, two new sections to chapter 15.1-27, and three new sections to chapter 15.1-37 of the North Dakota Century Code, relating to career development facilitation, student health insurance, the use of federal stimulus dollars, school personnel, student information systems, school district insurance, national board certification, program and course requirements, assessments, state aid payments, and an early childhood education council; to amend and reenact sections 15.1-06-04, 15.1-09.1-10, 15.1-21-02, 15.1-21-02.1, 15.1-23-03, 15.1-23-17, 15.1-27-03.1, 15.1-27-04, 15.1-27-07.2, 15.1-27-11, 15.1-27-19, 15.1-27-35, 15.1-27-35.3, 15.1-27-41, 15.1-32-18, 15.1-36-01, 15.1-38-01.1, and 57-15-14 of the North Dakota Century Code and section 55 of chapter 163 of the 2007 Session Laws, relating to school calendars, course requirements, home education, state aid payments, special education, school construction, English language learners, and school district general fund levies; to repeal sections 15.1-21-02.2, 15.1-27-20.1, 15.1-27-41, and 15.1-38-01.2 of the North Dakota Century Code, relating to high school graduation requirements, the minimum mill levy offset, the commission on education improvement, and new immigrant English language learners; to provide an appropriation; to provide a continuing appropriation; to provide for compensation increases; to provide for the distribution of supplemental one-time grants, supplemental operations grants, teacher support system grants, transportation grants, reorganization planning grants, regional education association grants, baseline recalculation grants, and contingency payments; to provide for a contingent transfer; to provide for legislative council studies and reports; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

**Career development facilitation - Certificate - Qualifications.**

1. The department shall develop a program leading to a certificate in career development facilitation. The department shall award the certificate to any individual who:
  - a. Holds a baccalaureate degree from an accredited institution of higher education;
  - b. Has at least a five-year employment history; and

- c. Successfully completes the department's programmatic requirements.
2. An individual holding a certificate awarded under this section is a career advisor.

**SECTION 2.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

**Career development facilitation - Provisional approval.**

1. The department may provisionally approve an individual to serve as a career advisor if the individual:
  - a. Holds a baccalaureate degree from an accredited institution of higher education;
  - b. Has at least a five-year employment history; and
  - c. Provides the department with a plan for completing the department's programmatic requirements within a two-year period.
2. Provisional approval under subsection 1 is valid for a period of two years and may not be extended by the department.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Health insurance programs - Joint enrollment program.** The superintendent of public instruction and the department of human services jointly shall develop a system under which families of children enrolling in the public school system are provided with information regarding state and federally funded health insurance programs and encouraged to apply for such coverage if determined to be eligible.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Education stabilization fund dollars - Notification of nonreplacement - Publication of notice.**

1. The superintendent of public instruction shall notify the superintendent and board of each school district in the state, by certified mail, that any education stabilization fund dollars received by the district as a result of the American Recovery and Reinvestment Act of 2009 must be used first to restore funding deficiencies in the 2009-10 school year when compared to the 2005-06 school year and that any additional dollars received under the American Recovery and Reinvestment Act of 2009 must be used for one-time, nonrecurring expenditures because this state is not responsible for replacing that level of funding or otherwise sustaining that level of funding during the 2011-13 biennium.
2. During the thirty-day period following receipt of the notification, the superintendent of each school district shall arrange to publish the notice at least twice in the official newspaper of the district.

**SECTION 5. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-04. School calendar - Length.**

1. ~~During each the 2009-10 school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:~~
  - a. ~~One hundred seventy-three full days of~~ must be used for instruction;
  - b. ~~Three days must be used for holidays listed in subdivisions b through j of subsection 4 of section 15.1-06-02 and, as selected by the school board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;~~
  - c. ~~Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory must be used for:~~
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside regular school hours; and
  - d. ~~Two days must be used for professional development activities.~~
2. During the 2010-11 school year, a school district shall provide for a school calendar of at least one hundred eighty-one days.
  - a. One hundred seventy-four days must be used for instruction;
  - b. Three days must be used for holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
  - c. Up to two days must be used for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. Two days must be used for professional development.
3. Beginning with the 2011-12 school year, a school district shall provide for a school calendar of at least one hundred eighty-two days.
  - a. One hundred seventy-five days must be used for instruction;
  - b. Three days must be used for holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;

- c. Up to two days must be used for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. Two days must be used for professional development.
4. A day for professional development must consist of:
- a. Six hours of professional development, exclusive of meals and other breaks, conducted within a single day; or
  - b. Two four-hour periods of professional development, exclusive of meals and other breaks, conducted over two days.
5. If a school district offers a four-hour period of professional development, as permitted in subdivision b of subsection 4, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. This subsection does not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.
6. a. In meeting the requirements for two days of professional development ~~activities under subsection 4~~ this section, a school district may require that its teachers attend the North Dakota education association instructional conference and may pay teachers for attending the conference, provided their attendance is verified.
- b. In meeting the requirements for two days of professional development ~~activities under subsection 4~~ this section, a school district may consider attendance at the North Dakota education association instructional conference to be optional, elect not to pay teachers for attending the instructional conference, and instead direct any resulting savings toward providing alternate professional development opportunities.
- c. For purposes of this section, a "day for professional development activities" means:
- (1) Six hours of professional development activities, exclusive of meals and other breaks, conducted within a single day; or
  - (2) Two four-hour periods of professional development activities, exclusive of meals and other breaks, conducted over two days.
3. If a school district offers a four-hour period of professional development activities, as permitted in subdivision e of subsection 2, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. The provisions of this subsection do not apply unless the

one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.

4. A school district may not require the attendance of teachers in school or at any school-sponsored, school-directed, school-sanctioned, or school-related activities and may not schedule classroom instruction time nor alternate professional development activities on any day that conflicts with the North Dakota education association instructional conference.
5. a. During the 2007-08 school year, a full day of instruction consists of:
  - (1) At least five and one-half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - (2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
- b. Beginning with the 2008-09 school year, a full day of instruction consists of:
  - (1) At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - (2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
7. Beginning with the 2010-11 school year, if a school district elects to provide an optional third day of professional development, the school district shall do so by:
  - a. Meeting the requirements for a day of professional development as set forth in subsection 4; or
  - b. Shortening four instructional days, for the purpose of providing for two-hour periods of professional development, provided:
    - (1) Each instructional day on which such professional development occurs includes at least four hours of instruction for kindergarten and elementary students and four and one-half hours for high school students;
    - (2) The instructional time for each course normally scheduled on that day is reduced proportionately or the daily schedule is reconfigured to ensure that the same course is not subject to early dismissal more than one time per school calendar, as a result of this subdivision; and

- (3) All teachers having a class dismissed as a result of this subdivision are required to be in attendance and participate in the professional development.
6. 8. a. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
7. b. A school that does not qualify under the provisions of ~~subsection 6~~ this subsection must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.
8. c. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.
9. For purposes of this section, a full day of instruction consists of:
- a. At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
- b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.

**SECTION 6.** A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

**Counselor positions - Requirement.**

1. Beginning with the 2010-11 school year, each school district must have available one full-time equivalent counselor for every three hundred students in grades seven through twelve.
2. Up to one-third of the full-time equivalency requirement established in subsection 1 may be met by career advisors.
3. For purposes of this section, a "career advisor" means an individual who holds a certificate in career development facilitation issued by the department of career and technical education under section 1 of this Act or an individual who is provisionally approved by the department of career and technical education under section 2 of this Act to serve as a career advisor.

**SECTION 7.** A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

**Career advisor - Duties.** A career advisor shall provide sequential career development activities, current career information, and related career exploration opportunities to students in grades seven through twelve. A career advisor shall use computer-assisted career guidance systems and work at the direction and under the supervision of the school district counseling staff.

**SECTION 8.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Student performance strategist - Verification - Qualifications.** Beginning with the 2010-11 school year, each school district must have available one full-time equivalent student performance strategist for every four hundred students in average daily membership in kindergarten through grade three. Each school district shall submit documentation to the superintendent of public instruction, at the time and in the manner directed by the superintendent, verifying the amount of time that each student performance strategist expended in tutoring students on a one-to-one basis or in groups ranging from two to five, or in providing instructional coaching to teachers. For purposes of this section, a "student performance strategist" must meet the qualifications of an elementary school teacher as set forth in section 15.1-18-07 and serve as a tutor or an instructional coach.

**SECTION 9.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Student information system - Statewide coordination.** Notwithstanding any other technology requirements imposed by the superintendent of public instruction, the information technology department, or the North Dakota educational technology council, each school district shall acquire PowerSchool through the information technology department and use it as its principal student information system.

**SECTION 10.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

**Maintenance of insurance - Report to superintendent of public instruction.**

1. During the 2009-10 school year and at least once every eight years thereafter, each school district shall obtain an appraisal of its buildings and its facilities, and an inventory of their contents.
2. Annually, each school district shall review the terms of any insurance policies providing coverage for its buildings, its facilities, and their contents and ensure that there are in place policies sufficient to provide in full for the repair or replacement of the buildings, its facilities, and their contents, in the event of a loss.
3. Annually, the superintendent of public instruction shall verify that each school district is in compliance with the requirements of this section.

**SECTION 11. AMENDMENT.** Section 15.1-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09.1-10. State aid - Payable to a regional education association - Obligation of district.**

1. The superintendent of public instruction shall forward the portion of a school district's state aid ~~that~~ which is payable by the superintendent under subdivision n of subsection 1 of section 15.1-27-03.1 as a result of the district's participation in a regional education association directly to the association in which the district participates. The superintendent shall forward the amount payable under this subsection at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01.
2. If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed upon it as a result of the district's participation in a regional education association, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.

**SECTION 12.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

**National board certification fund - Creation - Continuing appropriation.**

1. The national board certification fund is a special fund in the state treasury. The state investment board shall invest the fund in accordance with chapter 21-10. All interest and income received on investments are appropriated on a continuing basis to the superintendent of public instruction for the purpose of allowing the education standards and practices board to award grants to teachers pursuing national board certification.
2. The education standards and practices board shall make grants available to applicants in an amount equal to the cost of obtaining national board certification, but not exceeding two thousand five hundred dollars per applicant. The board shall make the grants available to applicants in chronological order, based on the date the board receives an applicant's completed application.
3. As a condition of the grant, the education standards and practices board may require recipients who achieve national board certification to mentor other individuals who are licensed to teach by the board.

**SECTION 13.** Chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**15.1-18.2-01. Professional development plan - Adoption - Review by school district.**

1. Each school district shall adopt a professional development plan. The plan must include a description of the professional development activities that the district offers or makes available, the district's requirements for participation by teachers, and the manner in which participation is documented.
2. Each school district shall review and if necessary modify its plan at least once every five years.

3. Each school district shall file a copy of its most recent professional development plan with the superintendent of public instruction.

**15.1-18.2-02. Professional development plan - Review by superintendent of public instruction.** The superintendent of public instruction shall review each school district's professional development plan to ensure that the plan meets the requirements of section 15.1-18.2-01, is designed to improve the quality of teaching and learning in the district, and is implemented in an efficient and effective manner.

**15.1-18.2-03. Professional development advisory committee - Duties - Staff support.**

1. The superintendent of public instruction shall appoint a professional development advisory committee to:
  - a. Examine the delivery of professional development in this state;
  - b. Review professional development needs from the perspective of teachers, school administrators, school board members, and parents;
  - c. Review the professional development plans filed by school districts and propose changes to improve the opportunities for professional development; and
  - d. Advise the superintendent regarding regulatory and statutory measures that could be pursued to improve the quality and availability of professional development opportunities.
2. The superintendent shall provide staff support to the professional development advisory committee.

**SECTION 14. AMENDMENT.** Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02. High schools - Required units.**

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
  - a. Four units of English language arts from a sequence that includes literature, composition, and speech;
  - b. Four units of mathematics, including:
    - (1) One unit of algebra II; and
    - (2) One unit for which algebra II is a prerequisite;
  - c. Four units of science, including:
    - (1) One unit of physical science; and
    - (2) One unit of biology;

- d. Four units of social studies, including ~~one~~:
    - (1) One unit of world history and one;
    - (2) One unit of United States history; and
    - (3) (a) One unit of problems of democracy; or  
(b) One-half unit of United States government and one-half unit of economics;
  - e. One-half unit of health;
  - f. One-half unit of physical education during each school year, provided that once every four years the unit must be a concept-based fitness class that includes instruction in the assessment, improvement, and maintenance of personal fitness;
  - g. Two units of fine arts, at least one of which must be music;
  - h. Two units of the same foreign or native American language; ~~and~~
  - i. One unit of an advanced placement course or one unit of a dual-credit course; and
  - j. Two units of career and technical education from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction.
2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make available to each student, at least once every two years, one-half unit of North Dakota studies, with an emphasis on the geography, history, and agriculture of this state.
  3. Each unit which must be made available under this section must meet or exceed the state content standards.
  4. For purposes of this section, unless the context otherwise requires, "make available" means that:
    - a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least those required by this section;
    - b. If a student selects a unit from the list required by this section, the public high school or the nonpublic high school shall provide the unit to the student; and
    - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.

5. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
6. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
  - a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
  - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
7. The requirements of this section do not apply to alternative high schools or alternative high school education programs.
8. The requirements of subdivisions g and h of subsection 1 do not apply to the North Dakota youth correctional center.

**SECTION 15. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.1. High school graduation - Diploma requirements.** ~~Before~~ Except as provided in section 15.1-21-02.3, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed ~~at least twenty-one~~ the following twenty-two units of high school coursework ~~from the minimum required curriculum offerings established by section 15.1-21-02.~~ ~~Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four;~~

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and
  - c. (1) One unit of any other science; or  
(2) Two one-half units of any other science;
4. Three units of social studies, including:
  - a. One unit of United States history;
  - b. (1) One-half unit of United States government and one-half unit of economics; or

- (2) One unit of problems of democracy; and
- c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5. a. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;
6. Three units of:
  - a. Foreign languages;
  - b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
7. Any five additional units.

**SECTION 16.** Section 15.1-21-02.3 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.3. Optional high school curriculum - Requirements.** If after completing at least two years of high school a student has failed to pass at least one-half unit from three subsections in section 15.1-21-02.1 or has a grade point average at or below the twenty-fifth percentile of other students in the district who are enrolled in the same grade, the student may request that the student's career advisor, guidance counselor, or principal meet with the student and the student's parent to determine if the student should be permitted to pursue an optional high school curriculum, in place of the requirements set forth in section 15.1-21-02.1. If a student's parent consents in writing to the student pursuing the optional high school curriculum, the student is eligible to receive a high school diploma upon completing the following requirements:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Two units of mathematics;
3. Two units of science;
4. Three units of social studies, which may include up to one-half unit of North Dakota studies and one-half unit of multicultural studies;
5. a. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;
6. Two units of:
  - a. Foreign languages;

- b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
7. Any seven additional units.

**SECTION 17.** Section 15.1-21-02.4 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.4. North Dakota career and technical education scholarship.** Any resident student who graduates from a high school during or after the 2010-11 school year is eligible to receive a North Dakota career and technical education scholarship provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

- 1. a. Completes one unit of algebra II, as defined by the superintendent of public instruction, in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;
- b. Completes two units of a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction; and
- c. Completes three additional units, two of which must be in the area of career and technical education;
- 2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
- 3. Obtains a cumulative grade point of at least "B", as determined by the superintendent of public instruction; and
- 4. Receives:
  - a. A composite score of at least twenty-four on an ACT; or
  - b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 18.** Section 15.1-21-02.5 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.5. North Dakota academic scholarship.** Any resident student who graduates from a high school during or after the 2010-11 school year is eligible to receive a North Dakota academic scholarship provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

- 1. a. Completes one unit of algebra II, as defined by the superintendent of public instruction, in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;

- b. Completes one additional unit of mathematics for which algebra II, as defined by the superintendent of public instruction, is a prerequisite; and
- c. Completes:
  - (1) Two units of the same foreign or native American language;
  - (2) One unit of fine arts or career and technical education; and
  - (3) One unit of a foreign or native American language, fine arts, or career and technical education;
- 2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
- 3. Obtains a cumulative grade point of at least "B", as determined by the superintendent of public instruction;
- 4. Receives a composite score of at least twenty-four on an ACT; and
- 5. Completes one unit of an advanced placement course and examination or a dual-credit course.

**SECTION 19.** Section 15.1-21-02.6 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.6. North Dakota scholarship - Amount - Applicability.**

- 1. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction either a North Dakota academic scholarship or a North Dakota career and technical education scholarship in the amount of seven hundred fifty dollars for each semester during which the student is enrolled full time at an accredited institution of higher education in this state and maintains a cumulative grade point average of 2.75.
- 2. A student is not entitled to receive more than six thousand dollars under this section.
- 3. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
- 4. This section does not require a student to be enrolled in consecutive semesters. However, a scholarship under this section is valid only for six academic years after the student's graduation from high school and may not be applied to graduate programs.
- 5. A scholarship under this section is available to any eligible student who graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.

**SECTION 20.** Section 15.1-21-02.7 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.7. North Dakota scholarship opportunities - 2009-10 high school graduates.**

1. Except as provided in subsection 3, any resident student who graduates from a high school during the 2009-10 school year is eligible to receive a North Dakota academic scholarship, provided the student is certified by the superintendent of public instruction as having obtained a composite score of at least twenty-four on an ACT.
2. Except as provided in subsection 3, any resident student who graduates from a high school during the 2009-10 school year is eligible to receive a North Dakota technical scholarship, provided the student is certified by the superintendent of public instruction as having obtained:
  - a. A composite score of at least twenty-four on an ACT; or
  - b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.
3. A student is eligible to receive a scholarship under either subsection 1 or 2, but may not receive a scholarship under both subsections.

**SECTION 21.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summer school courses and programs - Eligibility for payment.** The summer school courses and programs for which a school district may receive payment as provided in section 15.1-27-19 are:

1.
  - a. Remedial mathematics provided to students enrolled in any grade from kindergarten through eight;
  - b. Remedial reading provided to students enrolled in any grade from kindergarten through eight;
  - c. Beginning after the conclusion of the 2009-10 school calendar, mathematics provided to students enrolled in any grade from five through eight;
  - d. Beginning after the conclusion of the 2009-10 school calendar, reading provided to students enrolled in any grade from five through eight;
  - e. Beginning after the conclusion of the 2009-10 school calendar, science provided to students enrolled in any grade from five through eight; and
  - f. Beginning after the conclusion of the 2009-10 school calendar, social studies provided to students enrolled in any grade from five through eight; and
2. Any other high school summer courses that satisfy requirements for graduation, comprise at least as many clock-hours as courses offered during the regular school term, and comply with rules adopted by the superintendent of public instruction.

**SECTION 22.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Interim assessment.** Each school district shall administer annually to students in grades two through ten the measures of academic progress test or any other interim assessment approved by the superintendent of public instruction.

**SECTION 23.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Career interest inventory.** A school district shall administer to students, once during their enrollment in grade seven or eight and once during their enrollment in grade nine or ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 24.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summative assessment - Selection - Cost - Exemptions.**

1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The student's school district of residence is responsible for the cost of one summative assessment and its administration per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.
4. If the superintendent of public instruction determines that the cost of the summative assessment and its administration can be reduced through use of a state procurement process, the superintendent shall work with the school districts to procure and arrange for the administration of the assessment and shall withhold each district's share of the total cost from any state aid otherwise payable to the district.

**SECTION 25.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summative assessment - General educational development diploma - Selection - Cost.**

1. Except as otherwise provided, each student pursuing a general educational development diploma may take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The

school district in which the student resides at the time the student takes the summative assessment is responsible for the cost of one summative assessment and its administration per student.

2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. This section is applicable only to a student who has not reached the age of twenty-one before August first of the year of enrollment.

**SECTION 26.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Concepts of personal finance - Inclusion in curriculum.**

1. Beginning July 1, 2010, each school district shall ensure that its curriculum for either economics or problems of democracy includes the exposure of students to concepts of personal finance, including:
  - a. Checkbook mechanics, including writing checks, balancing, and statement reconciliation;
  - b. Saving for larger purchases;
  - c. Credit, including credit card usage, interest, and fees;
  - d. Earning power, including jobs for teenagers;
  - e. Taxation and paycheck withholdings;
  - f. College costs;
  - g. Making and living within a budget; and
  - h. Mortgages, retirement savings, and investments.
2. Upon written request, the superintendent of public instruction may allow a school district annually to select courses other than economics or problems of democracy for purposes of exposing students to the concepts of personal finance, as listed in this section, provided the school district can demonstrate that the number of students exposed to the concepts in the other selected courses would meet or exceed the number of students exposed under the requirements of subsection 1.
3. The requirements of this section may be provided by the regular classroom teacher of the course in which the concepts of personal finance are incorporated.

**SECTION 27.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Required reading of historical documents.** Before a student is deemed to have successfully completed either United States government or problems of democracy, as required by section 15.1-21-02.1, the student's school district shall ensure that the student has read the Declaration of Independence, the United States Constitution, and the Bill of Rights.

<sup>91</sup> **SECTION 28. AMENDMENT.** Section 15.1-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-03. Home education - Parental qualifications.** A parent may supervise home education if the parent:

1. ~~Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;~~
2. Holds a ~~baccalaureate degree~~ high school diploma or a general educational development diploma;
3. ~~Has met or exceeded the cutoff score of a national teacher examination given in this state or in any other state if this state does not offer such a test; or~~
4. 2. Meets the requirements of section 15.1-23-06.

<sup>92</sup> **SECTION 29. AMENDMENT.** Section 15.1-23-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-17. Home education - High school diplomas.**

1. A child's school district of residence, an approved nonpublic high school, or the center for distance education may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the center for distance education provided the child, through home education, has completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education. Beginning with the 2010-11 school year, the number of units required by this section increases to twenty-two.

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<sup>91</sup> Section 15.1-23-03 was also amended by section 2 of House Bill No. 1171, chapter 177.

<sup>92</sup> Section 15.1-23-17 was also amended by section 5 of House Bill No. 1171, chapter 177.

3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the child has met the applicable requirements for high school graduation.

<sup>93</sup> **SECTION 30. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
  - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
  - e. 0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;
  - f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
  - ~~f.~~ g. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
  - ~~g.~~ h. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
  - ~~h.~~ i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
  - ~~i.~~ j. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;

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<sup>93</sup> Section 15.1-27-03.1 was also amended by section 31 of House Bill No. 1400, chapter 175.

- k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
  - j. ~~0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;~~
  - ~~k.~~ l. ~~0.067~~ 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services; ~~and~~
  - l. ~~0.02 the number of full-time equivalent students, other than those provided for in subdivision j; who are enrolled in an English language learner program~~
  - m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;
  - n. 0.004 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and
  - o. 0.002 the number of students enrolled in average daily membership, in order to support technology.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

<sup>94</sup> **SECTION 31. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;

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<sup>94</sup> Section 15.1-27-03.1 was also amended by section 30 of House Bill No. 1400, chapter 175.

- d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
- e. 0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;
- f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
- f. g. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
- g- h. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
- h- i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
- i- j. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;
- k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- j- ~~0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;~~
- k- l. ~~0.067~~ 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services; ~~and~~
- m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;
- f. n. ~~0.02~~ 0.025 the number of full-time equivalent students, ~~other than those provided for in subdivision j, who are enrolled in an English language learner program~~ students representing that percentage of the total number of students in average daily membership which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];
- o. 0.004 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and

- p. 0.002 the number of students enrolled in average daily membership, in order to support technology.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 32. AMENDMENT.** Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04. Per student payment rate.**

1. a. The per student payment rate to which each school district is entitled for the first year of the biennium is three thousand two hundred ~~five~~ dollars.
- b. The per student payment rate to which each school district is entitled for the second year of the biennium is three thousand ~~three~~ seven hundred twenty-five seventy-nine dollars.
2. In order to determine the state aid payment to which each district is entitled, the superintendent of public instruction shall multiply each district's weighted student units by the per student payment rate set forth in subsection 1.

**SECTION 33. AMENDMENT.** Section 15.1-27-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-07.2. Baseline funding - Determination - Minimum and maximum allowable increases.**

1. The superintendent of public instruction shall determine each school district's baseline funding per weighted student unit by:
- a. Adding together all state aid received by the district during the 2006-07 school year;
- b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess cost reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in educational associations governed by joint powers agreements; and
- c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
2. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for the ~~2007-08~~ 2009-10 school year, is at least equal to one hundred ~~three and one-half~~ eight percent of the baseline funding per weighted student unit, as established in subsection 1.
- b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for each school year after the ~~2007-08~~ 2009-10 school year, is at

least equal to one hundred ~~six~~ twelve and one-half percent of the baseline funding per weighted student unit, as established in subsection 1.

3. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for the ~~2007-08~~ 2009-10 school year, one hundred ~~seven~~ twenty percent of the baseline funding per weighted student unit, as established in subsection 1.
- b. ~~Beginning with the 2008-09 school year, the maximum percentage of allowable growth in the baseline funding per weighted student unit provided in subdivision a must be annually increased by three percentage points, plus the district's share of any increased state aid for that year. Payments received by districts for the provision of full-day kindergarten do not constitute increases in state aid for purposes of this subdivision. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for each school year after the 2009-10 school year, one hundred thirty-four percent of the baseline funding per weighted student unit, as established in subsection 1.~~

**SECTION 34. AMENDMENT.** Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-11. Equity payments.**

1. The superintendent of public instruction shall:
  - a. Divide the imputed taxable valuation of the state by the total average daily membership of all school districts in the state in order to determine the state average imputed taxable valuation per student.
  - b. Divide the imputed taxable valuation of each school district by the district's total average daily membership in order to determine each district's average imputed taxable valuation per student.
2. a. If a school district's imputed taxable valuation per student is less than ~~eighty-eight and one-half~~ eighty-eight and one-half percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:
  - (1) ~~Determining the difference between eighty-eight and one-half percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and~~
  - (2) ~~Multiplying that difference by the district's total average daily membership.~~

- b. ~~Beginning July 1, 2008, if~~ If a school district's imputed taxable valuation per student is less than ninety percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:
- (4) a. Determining the difference between ninety percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and
- (2) b. Multiplying that difference by the district's total average daily membership.
3. Except as provided in subsection 4, the equity payment to which a district is entitled under this section equals the district's valuation deficiency multiplied by the lesser of:
- a. The district's general fund ~~mill~~ levy for the taxable year 2008; or
- b. One hundred eighty-five mills.
4. a. The equity payment to which a district is entitled may not exceed the district's taxable valuation multiplied by its general fund ~~mill~~ levy for the taxable year 2008.
- b. If a district's general fund levy for the taxable year 2008 is less than one hundred eighty-five mills, the superintendent of public instruction shall subtract the district's general fund ~~mill~~ levy for the taxable year 2008 from one hundred eighty-five mills, multiply the result by the district's taxable valuation, and subtract that result from the equity payment to which the district is otherwise entitled.
- c. If a district's imputed taxable valuation per student is less than fifty percent of the statewide imputed taxable valuation per student, the payment to which the district is entitled under this section may not be less than twenty percent of the statewide imputed taxable valuation per student times the school district's average daily membership, multiplied by one hundred eighty-five mills.
5. In determining the amount to which a school district is entitled under this section, the superintendent of public instruction may not include any payments received by the district as a result of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] and may not include in the district's average daily membership students who are dependents of members of the armed forces and students who are dependents of civilian employees of the department of defense.
6. For purposes of this section:
- a. "General fund levy" includes a district's high school transportation levy and its high school tuition levy.
- b. "Imputed taxable valuation" means the valuation of all taxable real property in the district plus ~~an amount determined by dividing sixty percent of the district's mineral and tuition revenue by the district's general fund mill levy.~~ Beginning July 1, 2008, "imputed taxable

valuation" means the valuation of all taxable real property in the district plus an:

- (1) An amount determined by dividing seventy percent of the district's mineral and tuition revenue, revenue from payments in lieu of property taxes on distribution and transmission of electric power, revenue from payments in lieu of taxes from electricity generated from sources other than coal, and revenue received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 by the district's general fund mill levy; and
  - (2) An amount determined by dividing the district's revenue from mobile home taxes and telecommunications taxes by the district's general fund mill levy.
- c. "Mineral revenue" includes all revenue from county sources reported under code 2000 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08.
- d. "Tuition revenue" includes all revenue reported under code 1300 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08. "Tuition revenue" does not include tuition income received specifically for the operation of an educational program provided at a residential treatment facility.

**SECTION 35.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Reorganized district - Continuation of equity payment.** If a school district that received an equity payment under section 15.1-27-11 becomes part of a reorganized district after June 30, 2010, the newly reorganized district is entitled to receive, for a period of two years, an amount equal to the greater of:

1. The equity payment received by each of the school districts during the school year immediately preceding the reorganization; or
2. The equity payment to which the newly reorganized school district is entitled under section 15.1-27-11.

**SECTION 36.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Dissolved district - Continuation of equity payment.** If a school district that received an equity payment under section 15.1-27-11 dissolves after June 30, 2009, any school district that receives a portion of the dissolved district's land is entitled to receive, for a period of two years, an amount equal to the greatest of:

1. That percentage of the dissolved school district's equity payment from the school year immediately preceding the dissolution which is the same as that percentage of the dissolved district's land which was attached to the receiving district;

2. The same equity payment to which the receiving school district was entitled in the school year immediately preceding the dissolution; or
3. The equity payment to which the receiving school district is entitled under section 15.1-27-11.

**SECTION 37. AMENDMENT.** Section 15.1-27-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-19. Summer school courses and programs - Payments to school districts.**

1. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in a high school summer course, the superintendent of public instruction shall verify that the course ~~satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction~~ meets the requirements of section 21 of this Act.
2. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in an elementary summer program, the superintendent of public instruction shall verify that the program meets the requirements of section 21 of this Act and complies with rules adopted by the superintendent of public instruction.

**SECTION 38. AMENDMENT.** Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35. Average daily membership - Calculation.**

1. a. ~~Average~~ During the 2009-10 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
  - a. (1) The school district's calendar; or
  - b. (2) One hundred eighty.
- b. During the 2010-11 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
  - (1) The school district's calendar; or
  - (2) One hundred eighty-one.

- c. Beginning with the 2011-12 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
- (1) The school district's calendar; or
  - (2) One hundred eighty-two.
2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:
- a. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
  - b. The two days set aside for professional development activities under section 15.1-06-04; and
  - c. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.
3. For purposes of calculating average daily membership:
- a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - b. ~~During the 2007-08 school year, a student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 0.50. Beginning with the 2008-09 school year, a~~ A student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

**SECTION 39. AMENDMENT.** Section 15.1-27-35.3 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35.3. Payments to school districts - Unobligated general fund balance - Report to legislative council.**

1. The superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount

by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars. Beginning July 1, 2008, the superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty-five percent of its actual expenditures, plus twenty thousand dollars.

2. In making the determination required by subsection 1, the superintendent of public instruction may not include in a district's unobligated general fund balance any moneys that:
  - a. (1) Were received by the district during the school year ending June 30, 2009, on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3; and
  - (2) Exceeded the amount received by the district during the school year ending June 30, 2008, for the purpose stated in paragraph 1;
  - b. Were received directly by the district from the United States government in accordance with the American Recovery and Reinvestment Act of 2009; or
  - c. Were received by the district as supplemental one-time grants under section 52 of this Act.
3. Any district having more than fifty thousand dollars excluded in the determination of its ending fund balance, as required by subsection 2, shall provide a report to the legislative council. The report, which must be presented at the time and in the manner directed by the legislative council, must address how the money was expended, including the number of mills by which the district was able to decrease its property taxes, if such was a permitted use.

<sup>95</sup> **SECTION 40. AMENDMENT.** Section 15.1-27-41 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-41. North Dakota commission on education improvement - Membership - Duties - Report to legislative council - Reimbursement for expenses.**

1. The North Dakota commission on education improvement consists of:
  - a. (1) The governor or an individual designated by the governor, who shall serve as the chairman;

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<sup>95</sup> Section 15.1-27-41 was also amended by section 97 of House Bill No. 1436, chapter 482, and was repealed by section 65 of House Bill No. 1400, chapter 175.

- (2) One individual, appointed by the governor, who chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having more than one thousand students in average daily membership and has not served on the commission for more than one interim;
  - (3) One individual, appointed by the governor, who chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having more than two hundred twenty but fewer than one thousand students in average daily membership and has not served on the commission for more than one interim;
  - (4) One individual, appointed by the governor, who chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having fewer than two hundred twenty students in average daily membership and has not served on the commission for more than one interim;
  - (5) ~~One individual, appointed by the governor, who is employed as a school district business manager;~~
  - (6) The chairman of the senate education committee or the chairman's designee;
  - (7) (6) The chairman of the house education committee or the chairman's designee;
  - (8) (7) The senate minority leader or the leader's designee;
  - (9) (8) One legislator appointed by the chairman of the legislative ~~council~~ management; and
  - (10) (9) The superintendent of public instruction or an assistant superintendent designated by the superintendent of public instruction; and
  - (11) (10) The director of the department of career and technical education or the director's designee; and
- b. The following nonvoting members:
- (1) ~~One nonvoting member~~ individual representing the North Dakota council of educational leaders; ~~one nonvoting member;~~
  - (2) One individual representing the North Dakota education association; ~~and one nonvoting member;~~

- (3) One individual representing the North Dakota school boards association;
    - (4) One individual who is or has served as the president of a private four-year institution of higher education, appointed by the chairman of the legislative management;
    - (5) One individual who is the owner or manager of a business located in this state, appointed by the chairman of the legislative management from a list of three nominees submitted by the North Dakota chamber of commerce; and
    - (6) The commissioner of higher education or the commissioner's designee.
  2. The commission shall establish its own duties and rules of operation and procedure, including rules relating to appointments, terms of office, vacancies, quorums, and meetings, provided that the duties and the rules do not conflict with any provisions of this section.
  3.
    - a. The members of the commission are entitled to reimbursement for actual and necessary expenses incurred in the same manner as state officials.
    - b. In addition, members of the legislative assembly who serve on the commission and the individual who is the owner or manager of a business located in this state are entitled to receive compensation in the amount of one hundred thirty-five dollars per day if they are attending meetings or performing duties directed by the commission. The superintendent of public instruction shall use up to forty thousand dollars from moneys appropriated in the grants - state school aid line item in section 3 of Senate Bill No. 2013 the appropriation bill for the superintendent of public instruction, as approved by the ~~sixtyth~~ legislative assembly, to provide the compensation and reimbursements.
  4. The commission shall examine:
    - a. Examine the current system of delivering and financing public elementary and secondary education and shall develop recommendations addressing educational adequacy, the equitable distribution of state education funds, the allocation of funding responsibility between federal, state, and local sources, and any other matters that could result in the improvement of elementary and secondary education in the state;
    - b. Examine the state's high school graduation requirements, curricular standards, and assessments to ensure that students have the academic skills necessary to move seamlessly and without remediation from high schools to institutions of higher education or to meet the performance levels expected by employers;
    - c. Examine the measures enacted by the most recent legislative assembly to improve student performance, confirm their full

implementation, and recommend future measures for continued improvement; and

- d. Examine the measures enacted by the most recent legislative assembly to improve the quality of instruction, confirm their full implementation, and recommend future measures for continued improvement.
5. The commission shall provide periodic reports to the governor and to the legislative council.

**SECTION 41. AMENDMENT.** Section 15.1-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-18. Cost - Liability of school district for special education.**

1. Each year the superintendent of public instruction shall identify the approximately one percent of special education students statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement beyond the multiplier that is established in subsection 3.
2. The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.
3. "Excess costs" are those that exceed four ~~and one-half~~ times the state average cost of education per student and which are incurred by the special education students identified in subsection 1.
4. All costs of providing special education and related services to those students identified in subsection 1, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence.
5. In addition to any other reimbursements provided under this section, if a school district expends more than two percent of its annual budget for the provision of special education and related services to one student, the district shall notify the superintendent of public instruction. Upon verification, the superintendent shall reimburse the district for the difference between:
  - a. Two percent of the district's annual budget; and
  - b. The lesser of:
    - (1) The amount actually expended by the district for the provision of special education and related services to that student; or
    - (2) The amount representing four ~~and one-half~~ times the state average cost of education per student.

**SECTION 42. AMENDMENT.** Section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-01. School construction projects - Approval.**

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of ~~twenty-five~~ forty thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project; ~~and the educational utility of the project; and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project~~ or demonstrates potential utilization of the project by a future reorganized school district; and
  - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3.
  - a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
    - (1) The need for the project;
    - (2) The educational utility of the project;
    - (3) ~~The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;~~
    - (4) The potential use of the project by a future reorganized school district;
    - ~~(5)~~ (4) The capacity of the district to pay for the project; and
    - ~~(6)~~ (5) Any other objective factors relative to the appeal.
  - b. The decision of the state board is final.
4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy-five thousand dollars.
5. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization, even if the school board pays for the project in whole or in part with moneys received on account

of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.

6. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

**SECTION 43.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**North Dakota early childhood education council - Membership - Terms.**

1. The North Dakota early childhood education council consists of:
  - a. A chairman appointed by the governor;
  - b. The superintendent of public instruction, or the superintendent's designee;
  - c. The state health officer, or the officer's designee;
  - d. The director of the department of human services, or the director's designee;
  - e. The North Dakota head start - state collaboration administrator, or the administrator's designee;
  - f. The commissioner of higher education, or the commissioner's designee;
  - g. The chairman of the senate education committee, or the chairman's designee;
  - h. The chairman of the house of representatives education committee, or the chairman's designee; and
  - i. The following gubernatorial appointees:
    - (1) The superintendent of a school district having at least one thousand students in average daily membership;
    - (2) The superintendent of a school district having fewer than one thousand students in average daily membership;
    - (3) The superintendent of a school district headquartered on a reservation or including reservation land within its boundaries;
    - (4) The principal of a school district;
    - (5) An individual employed as an elementary school teacher;
    - (6) An individual representing a non-religious-based provider of preschool education;

- (7) An individual representing a religious-based provider of preschool education;
  - (8) An individual representing a center-based licensed child care provider;
  - (9) An individual representing a home-based licensed child care provider;
  - (10) An individual representing a reservation-based head start program;
  - (11) An elected member of a school board;
  - (12) The parent of a child not yet enrolled in elementary school; and
  - (13) The parent of a child with special needs not yet enrolled in elementary school.
2.
    - a. The term of each member enumerated in subdivision g of subsection 1 is three years and begins on July first. The terms must be staggered by lot so that four of the terms expire each year.
    - b. If at any time during a member's term the member ceases to possess the qualifications required by this section, the member's seat is deemed vacant and the governor shall appoint another qualified individual to serve for the remainder of the term.
    - c. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.
  3. The council shall meet at least twice each year, at the call of the chairman.

**SECTION 44.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**Council - Duties.** The council shall:

1. Review the delivery of early childhood education in this state;
2. Conduct a needs assessment;
3. Review early childhood education standards and propose revisions to the standards as needed;
4. Review opportunities for public and private sector collaboration in the delivery of early childhood education in this state;
5. Develop a comprehensive plan governing the delivery of early childhood education in this state; and

6. Provide a biennial report regarding its activities to the governor and the legislative council.

**SECTION 45.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**Council members - Reimbursement for expenses.** Each member of the council is entitled to receive reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council. In addition, each member of the legislative assembly who serves on the council is entitled to receive compensation in the amount provided per day for members of the legislative council under section 54-35-10 for attending meetings or performing duties as directed by the council.

**SECTION 46. AMENDMENT.** Section 15.1-38-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-38-01.1. English language learner - Definition.** English language learner means a student who:

1. Is at least five years of age but has not reached the age of ~~twenty-two~~ twenty-one before August first of the year of enrollment;
2. Is enrolled in a school district in this state;
3. Has a primary language other than English or comes from an environment in which a language other than English significantly impacts the individual's level of English language proficiency; and
4. Has difficulty speaking, reading, writing, and understanding English, as evidenced by a language proficiency test approved by the superintendent of public instruction and aligned to the state English language proficiency standards and the state language proficiency test.

<sup>96</sup> **SECTION 47. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. General fund levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus ~~eighteen~~ twelve percent up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
  - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved

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<sup>96</sup> Section 57-15-14 was also amended section 2 of Senate Bill No. 2199, chapter 535.

by a majority of the qualified electors voting upon the question at any regular or special school district election.

- b. There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. After June 30, 2007, in any school district election for approval by electors of unlimited or increased levy authority under subsection 1 or 2, the ballot must specify the number of mills, the percentage increase in dollars levied, or that unlimited levy authority is proposed for approval, and the number of taxable years for which that approval is to apply. After June 30, 2007, approval by electors of unlimited or increased levy authority under subsection 1 or 2 may not be effective for more than ten taxable years.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to ten percent of the number of electors who cast votes in the most recent election in the school district. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

**SECTION 48. APPROPRIATION - TEACHER SUPPORT SYSTEM PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,300,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing a grant to the education standards and practices board for a teacher support system program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

1. The education standards and practices board shall:
  - a. Employ an individual to serve as a teacher support system coordinator;
  - b. Administer and evaluate the program; and

- c. (1) Select and train experienced teachers who will serve as mentors for first-year teachers and assist the first-year teachers with instructional skills development; or
  - (2) If a school district is not in need of mentors for its first-year teachers, the board shall select and train experienced teachers who will work with school district administrators to identify the needs of the district's non-first-year teachers and through research-validated interventions and the use of proven instructional methods help the district's non-first-year teachers address their particular needs.
2. The education standards and practices board may use any moneys provided under this section for staff compensation, training, evaluation, stipends for mentors and experienced teachers who assist first-year and non-first-year teachers participating in the program, and any other administrative expenses resulting from the program; provided, however, that the board may not expend more than five percent of the funds appropriated in this section for administrative expenses.
  3. The education standards and practices board may provide services under this section only to teachers employed by school districts and not to teachers employed by any other entity.

#### **SECTION 49. APPROPRIATION - NATIONAL BOARD CERTIFICATION**

**FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of creating the national board certification fund, for the biennium beginning July 1, 2009, and ending June 30, 2011.

#### **SECTION 50. APPROPRIATION - CONTINUING EDUCATION GRANTS.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing continuing education grants, for the biennium beginning July 1, 2009, and ending June 30, 2011.

1. The superintendent shall award grants in amounts up to \$1,200 to eligible recipients in chronological order, based on the date of an individual's application. An eligible recipient must:
  - a. (1) Be licensed to teach by the education standards and practices board;
  - (2) Have taught in this state during each of the last three school years; and
  - (3) Be enrolled at an institution under the control of the state board of higher education in either a master of education program in educational leadership or a program leading to a specialist diploma in educational leadership;
- b. Be pursuing the requirements for a certificate in career development facilitation; or

- c. Be pursuing a school counselor credential.
2. If any of the amount appropriated under this section remains after the superintendent of public instruction has awarded grants to all eligible recipients, the superintendent shall distribute that amount as additional per student payments on a prorated basis, according to the latest available average daily membership of each school district.

**SECTION 51. USE OF NEW MONEY - COMPENSATION INCREASES - REPORTS TO LEGISLATIVE COUNCIL.**

1. During the 2009-11 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received by the district for per student payments and supplemental operations grants to increase the compensation paid to teachers, counselors, and career advisors and to provide compensation to teachers, counselors, and career advisors who begin employment with the district on or after July 1, 2009.
2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money received by a district during the 2009-11 biennium by:
  - a. Determining the total amount of dollars in the 2009-11 biennium grants - state school aid line item and in the grants - supplemental operations line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, and subtracting from that amount:
    - (1) Equity payments under section 15.1-27-11;
    - (2) Payments to school districts participating in regional education associations under section 15.1-27-03.1;
    - (3) Grants to school districts for reorganization planning under section 55 of this Act;
    - (4) Grants to regional education associations under section 56 of this Act; and
    - (5) Eleven dollars and fifty-eight cents per weighted student unit;
  - b. Determining the total amount of dollars in the 2007-09 biennium grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixtieth legislative assembly, and subtracting from that amount:
    - (1) Equity payments under section 15.1-27-11; and
    - (2) Grants to school districts for reorganization planning under section 49 of chapter 163 of the 2007 Session Laws; and
  - c. Subtracting the amount arrived at under subdivision b from the amount arrived at under subdivision a.

3. For purposes of this section, money made available to the state as a result of federal action to stimulate the national economy or to address state fiscal recovery does not constitute new money unless the money is distributed through the state school aid formula as provided in chapter 15.1-27.
4. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must be treated as a single district for purposes of this section.
5.
  - a. This section does not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.
  - b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.
  - c. The superintendent of public instruction shall report all notices received under this subsection to the legislative council.
6. This section does not extend, by intent, implication, or any other granting of unenumerated statutory rights, to teachers, counselors, and career advisors employed by an entity other than the board of a school district.

#### **SECTION 52. SUPPLEMENTAL ONE-TIME GRANTS - REPORT TO LEGISLATIVE COUNCIL.**

1. The superintendent of public instruction may expend up to \$85,644,337 from the grants - one-time supplemental payments line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing, during the biennium beginning July 1, 2009, and ending June 30, 2011, one-time supplemental payments to school districts on a prorated basis, according to the latest available average daily membership of each school district. The superintendent shall divide the amount due each school district under this section into four payments of approximately equal size and shall forward each payment on a monthly basis, beginning September 1, 2009.
2. Grants distributed under this section may be used only for:
  - a. The improvement, renovation, repair, or modernization of school buildings and facilities, including deferred maintenance; weatherization; heating, ventilation, and cooling projects; asbestos removal and abatement; security improvements; and laboratory improvements provided that the projects meet the approval requirements of section 15.1-36-01;

- b. Building additions, provided the additions do not exceed twenty-five percent of the square footage of the building to which they are to be attached and further provided that the additions meet the approval requirements of section 15.1-36-01;
  - c. Equipment, including technological equipment, career and technical education equipment, vehicles for instructional purposes, and vehicles for student transportation;
  - d. Textbooks, instructional materials, and library media materials;
  - e. Title I expenditures; or
  - f. Professional development for teachers and administrators.
3. Grants distributed under this section may not be used for any other purpose, including temporary property tax reductions, principal payments on outstanding debts, construction of new buildings, hiring of new personnel, or compensation increases.
  4. Grants distributed under this section do not constitute new money for purposes of increased compensation under section 51 of this Act.
  5. Any school district receiving a grant under this section shall file a report with the superintendent of public instruction, at the time and in the manner directed by the superintendent. The report must include a description of all expenditures, obligations, or other commitments made as a result of receiving a grant under this section. The superintendent shall compile the information and present it to the legislative council.

**SECTION 53. SUPPLEMENTAL OPERATIONS GRANTS.** The superintendent of public instruction may expend up to \$16,795,584 from the grants - supplemental operations line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing during the first year of the biennium beginning July 1, 2009, and ending June 30, 2011, a supplemental grant to each school district on a prorated basis, according to the latest available average daily membership of each school district. The superintendent shall forward payment under this section to each school district on or before September 1, 2009.

**SECTION 54. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. During each year of the 2009-11 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
  - a. Ninety-two cents per mile for schoolbuses having a capacity of ten or more passengers;
  - b. Forty-four cents per mile for vehicles having a capacity of nine or fewer passengers; and
  - c. Twenty-four cents per student for each one-way trip.

2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of the transportation formula as it existed on June 30, 2001.
3. If any moneys provided for transportation payments in the grants - transportation line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, remain after application of the formula provided for in this section, the superintendent of public instruction shall prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.
4. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

**SECTION 55. SCHOOL DISTRICT REORGANIZATION PLANNING GRANTS.** The superintendent of public instruction may expend up to \$100,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing planning grants to school districts participating in reorganizations under chapter 15.1-12, for the biennium beginning July 1, 2009, and ending June 30, 2011. A grant provided under this section may not exceed \$25,000 and may not be awarded unless the student enrollment of the participating districts exceeds three hundred sixty. If a grant is provided and the recipient districts vote not to reorganize, the superintendent of public instruction shall withhold the grant amount that each district received under this section from any state aid payable to the district.

**SECTION 56. REGIONAL EDUCATION ASSOCIATIONS - GRANTS.** During each year of the 2009-11 biennium, the superintendent of public instruction shall expend up to \$200,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing grants in the amount of \$25,000, to each group of school districts which has been designated as a regional education association under section 15.1-09.1-02. Before September first of each year, the superintendent of public instruction shall divide each grant by the number of school districts in the respective association and forward that portion of each school district's individual grant directly to the association in which the district participates.

**SECTION 57. FEDERAL IMPACT AID - BASELINE RECALCULATION - GRANT.**

1. If the amount of federal impact aid received by a school district during the 2006-07 school year resulted in that district losing state aid under section 15.1-27-35.3 during the 2007-09 biennium, the superintendent shall reestablish that district's baseline by:
  - a. Adding together the amount of state aid that the district would have received during the 2006-07 school year if in determining the district's ending fund balance the average amount of federal impact aid received by the district during the 2005-06 and 2006-07 school years had been used, rather than the actual amount received during the 2006-07 school year;

- b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in regional education associations; and
  - c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
2. On or before August 1, 2009, the superintendent of public instruction shall use up to \$300,000 from moneys appropriated in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the legislative assembly, to provide to a school district a grant equaling the difference in the 2007-09 biennium state aid payments that resulted from the baseline recalculation required by this section.

**SECTION 58. AMENDMENT.** Section 55 of chapter 163 of the 2007 Session Laws is amended and reenacted as follows:

**SECTION 55. CONTINGENT MONEY - 2007-09.**

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in Senate Bill No. 2013, as approved by the sixtieth legislative assembly, any money that was appropriated to the superintendent for special education contracts in Senate Bill No. 2013 and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009.
2. If any money that was appropriated to the superintendent of public instruction for state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009, the superintendent shall:
  - 4- a. Use the first \$1,000,000, or so much of that amount as may be necessary, to pay any state obligations in excess of the amount appropriated for special education contract charges;
  - 2- b. Use the next \$2,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in regional education associations under chapter 15.1-09.1;
  - 3- c. Use the next \$550,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts serving English language learners and new immigrant English language learners, in accordance with chapter 15.1-38;
  - 4- d. Use the next \$200,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to

school districts offering an adult education program during the 2007-09 biennium; and

- 5- e. Use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

#### **SECTION 59. CONTINGENT MONEY - 2009-11.**

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, any money that was appropriated to the superintendent for special education contracts and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. If any money that was appropriated to the superintendent of public instruction for grants - state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent shall use the money to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 60. CONTINGENT TRANSFER BY BANK OF NORTH DAKOTA FOR SPECIAL EDUCATION.** If during the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent of public instruction determines that, using all available sources, there are insufficient funds with which to fully reimburse school districts for the excess costs of serving the one percent of special education students statewide who require the greatest school district expenditures in order to be provided with special education and related services, the industrial commission shall transfer from the earnings and accumulated and undivided profits of the Bank of North Dakota the amount the superintendent of public instruction certifies is necessary to provide the statutorily required level of reimbursement. The superintendent of public instruction shall file for introduction legislation requesting that the sixty-second legislative assembly return any amount transferred under this section to the Bank of North Dakota.

**SECTION 61. LEGISLATIVE COUNCIL STUDY - SCHOOL APPROVAL AND ACCREDITATION.** During the 2009-10 interim, the legislative council shall consider studying statutory criteria for the approval of public and nonpublic schools, regulatory criteria for the accreditation of schools, and the consequences to schools and school districts that fail to meet the criteria. In addition, the study must include a review of statutory sections that place specific requirements on school districts and the consequences to school districts that fail to abide by the requirements. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 62. LEGISLATIVE COUNCIL STUDY - WEATHER-RELATED SCHOOL CANCELLATIONS.** During the 2009-10 interim, the legislative council shall consider studying the cancellation of school and early dismissal as a result of

severe weather or other emergency conditions. The study must include parameters for determining whether to dismiss school early or cancel school for the entire day, statutory requirements for making up lost instructional time, issues related to personnel contracts, issues related to the school calendar and the payment of state aid, and gubernatorial authority to waive statutory rescheduling requirements. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 63. LEGISLATIVE COUNCIL STUDY - DISPLACEMENT OF STUDENTS - NATURAL OR MANMADE CAUSES.** During the 2009-10 interim, the legislative council shall consider studying longer term elementary and high school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic. The study should address the coordination of plans to accommodate displaced students, examine responsibility for payment obligations to districts that are not able to provide services, examine responsibility for compensating districts that have accepted displaced students, and specifically examine the expenses incurred by school districts that provided services to displaced students during the 2009 floods. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

<sup>97</sup> **SECTION 64. REPEAL.** Sections 15.1-21-02.2, 15.1-27-20.1, and 15.1-38-01.2 of the North Dakota Century Code are repealed.

<sup>98</sup> **SECTION 65. REPEAL.** Section 15.1-27-41 of the North Dakota Century Code is repealed.

**SECTION 66. EFFECTIVE DATE.**

1. Section 47 of this Act is effective for taxable years beginning after December 31, 2008.
2. Sections 15 and 16 of this Act become effective on July 1, 2010.
3. Section 65 of this Act becomes effective on December 31, 2010.
4. Section 31 of this Act becomes effective on July 1, 2011.

**SECTION 67. EXPIRATION DATE.** Sections 39 and 42 of this Act are effective through June 30, 2011, and after that date are ineffective. Section 28 of this Act is effective through July 31, 2011, and after that date is ineffective.

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<sup>97</sup> Section 15.1-21-02.2 was also amended by section 1 of House Bill No. 1435, chapter 176; section 15.1-27-20.1 was also repealed by section 8 of Senate Bill No. 2199, chapter 535.

<sup>98</sup> Section 15.1-27-41 was also amended by section 40 of House Bill No. 1400, chapter 175, and section 97 of House Bill No. 1436, chapter 482.

**SECTION 68. EMERGENCY.** Sections 39 and 58 of this Act are declared to be an emergency measure.

Approved May 19, 2009

Filed May 19, 2009

**CHAPTER 176****HOUSE BILL NO. 1435**

(Representatives Schatz, Grande, Mueller)  
(Senators Dever, Dotzenrod, G. Lee)

AN ACT to amend and reenact section 15.1-21-02.2 of the North Dakota Century Code, relating to inclusion of the Declaration of Independence and the United States Constitution in the high school social studies curriculum.

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

<sup>99</sup> **SECTION 1. AMENDMENT.** Section 15.1-21-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.2. High school coursework requirements.**

1. ~~Beginning with the 2008-09 school year, no~~ A student may not graduate from a high school in this state unless the student demonstrates successful completion of the following:
  - a. Four units of English language arts;
  - b. Two units of mathematics;
  - c. Two units of science;
  - d. Three units of social studies, ~~which may include one-half unit of North Dakota studies and one-half unit of multicultural studies including:~~
    - (1) One unit of United States history;
    - (2) (a) One-half unit of United States government and one-half unit of economics, with a requirement that each student read the Declaration of Independence, the United States Constitution, and the Bill of Rights; or  
(b) One unit of problems of democracy, with a requirement that each student read the Declaration of Independence, the United States Constitution, and the Bill of Rights; and
    - (3) One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;

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<sup>99</sup> Section 15.1-21-02.2 was also repealed by section 64 of House Bill No. 1400, chapter 175.

- e. One unit of physical education, which may include up to one-half unit of health; and
  - f. One unit of a foreign or native American language, fine arts, or career and technical education.
2. The superintendent of public instruction shall work with each school district to identify course offerings that meet the requirements of subdivisions a through f of subsection 1.
  3. Before September first of each year, each school district shall file a copy of its graduation requirements with the superintendent of public instruction.
  4. A school district may not reduce its graduation requirements below those in existence on June 30, 2007.

Approved April 21, 2009

Filed April 22, 2009

## CHAPTER 177

### HOUSE BILL NO. 1171

(Representatives Grande, R. Kelsch, Karls, L. Meier)  
(Senators G. Lee, Miller)

AN ACT to amend and reenact sections 15.1-23-01, 15.1-23-03, 15.1-23-06, 15.1-23-08, and 15.1-23-17 of the North Dakota Century Code, relating to home education; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15.1-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-01. Home education - Definition.** For purposes of this chapter, "home education" means a program of education supervised by a child's parent; ~~in the child's home~~; in accordance with the requirements of this chapter.

<sup>100</sup> **SECTION 2. AMENDMENT.** Section 15.1-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-03. Home education - Parental qualifications.** A parent may supervise home education if the parent:

1. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Holds a ~~baccalaureate degree~~ high school diploma or a general equivalency diploma;
3. Has met or exceeded the cutoff score of a national teacher examination given in this state or in any other state if this state does not offer such a test; or
4. Meets the requirements of section 15.1-23-06.

**SECTION 3. AMENDMENT.** Section 15.1-23-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-06. Home education - Required monitoring of progress.** A parent who ~~has a high school diploma or a general education development certificate~~ does not meet the qualifications provided in section 15.1-23-03 may supervise home education but must be monitored in accordance with section 15.1-23-07 for the first two years. If a child receiving home education obtains a basic composite standardized achievement test score below the fiftieth percentile nationally, the parent must be monitored for at least one additional school year and until the child receives a test score at or above the fiftieth percentile. If testing is not required by

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<sup>100</sup> Section 15.1-23-03 was also amended by section 28 of House Bill No. 1400, chapter 175.

section 15.1-23-07 during the first two years of monitoring, the period of monitoring may not be extended, except upon the mutual consent of the parent and the monitor. If a parent completes the monitoring requirements of this section for one child, the parent may not be monitored with respect to other children for whom the parent supervises home education.

**SECTION 4. AMENDMENT.** Section 15.1-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-08. Monitoring or test administration.** An individual who in accordance with this chapter ~~monitors a child receiving home education or who~~ administers a standardized achievement test to a child receiving home education shall notify the child's school district of residence.

<sup>101</sup> **SECTION 5. AMENDMENT.** Section 15.1-23-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-17. Home education - High school diplomas.**

1. A child's school district of residence, an approved nonpublic high school, or the center for distance education may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the center for distance education provided the child, through home education, has completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education. Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four.
3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the child has met the applicable requirements for high school graduation.

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<sup>101</sup> Section 15.1-23-17 was also amended by section 29 of House Bill No. 1400, chapter 175.

**SECTION 6. EXPIRATION DATE.** This Act is effective through July 31, 2011, and after that date is ineffective.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 178****HOUSE BILL NO. 1273**

(Representatives Myxter, Wall)

AN ACT to amend and reenact section 15.1-25-01 of the North Dakota Century Code, relating to eligibility for enrollment in a postsecondary options program.

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

**SECTION 1. AMENDMENT.** Section 15.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-25-01. Postsecondary enrollment options program.** Any North Dakota student enrolled in grade ten, eleven, or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of an academic course offered by any postsecondary institution accredited by a regional accrediting organization or a career and technical education course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education.

Approved March 24, 2009

Filed March 24, 2009

**CHAPTER 179****SENATE BILL NO. 2212**

(Senators Bakke, Fischer, Taylor)

(Representatives Delmore, N. Johnson, Kingsbury)

AN ACT to amend and reenact section 15.1-38-02 of the North Dakota Century Code, relating to English language learners; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 15.1-38-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-38-02. Program establishment.** The superintendent of public instruction shall:

1. Appoint a state advisory committee to assist with the establishment and administration of English language learner programs and the state English language proficiency assessment;
2. Establish standards for English language learner programs;
3. Establish student caseload criteria for English language learner teachers, deviation from which may not affect the accreditation or funding level of a school district;
4. Ensure that the English language learner programs use effective research-based methods to teach the students;
- 4- 5. Assist school districts with the development and administration of English language learner programs and services;
- 5- 6. Employ a program administrator and other necessary personnel; and
- 6- 7. Coordinate federal, state, and local funding to maximize the services available to students.

**SECTION 2. ENGLISH LANGUAGE LEARNER GRANT.** The superintendent of public instruction shall provide a grant to one regional education association in order that the association may purchase or otherwise acquire instructional materials for the enhancement of English language learner services and provide professional development opportunities pertaining to the provision of English language learner services. The association that receives the grant under this section also must agree to contract with other regional education associations and school districts in the state for the purpose of providing various English language learner services to those entities.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys from federal fiscal stabilization-other government services funds made available to the governor under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing an

English language learner grant to a regional education association under section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 28, 2009

Filed May 1, 2009

# ELECTIONS

## CHAPTER 180

### SENATE BILL NO. 2324

(Senators Dever, Nelson, Oehlke)  
(Representatives L. Meier, Wolf, Boehning)

AN ACT to create and enact a new subsection to section 16.1-01-04 of the North Dakota Century Code, relating to qualifications of electors; to amend and reenact subsection 1 of section 15.1-09-11, sections 16.1-01-09, 16.1-01-09.1, 16.1-02-01, 16.1-02-02, and 16.1-02-05, subsection 2 of section 16.1-02-06, sections 16.1-02-07, 16.1-02-10, 16.1-02-13, 16.1-03-03, 16.1-03-19, 16.1-05-01, and 16.1-05-02, subsection 3 of section 16.1-05-04, sections 16.1-05-06, 16.1-09-02, 16.1-10-04.1, 16.1-11-06, 16.1-13-32, 16.1-15-15, 16.1-15-16, 16.1-15-34, 16.1-16-01, and 40-09-03, subsection 1 of section 40-21-02, sections 40-21-07 and 44-08-21, and subsection 2 of section 57-40.6-02 of the North Dakota Century Code, relating to absentee ballot deadlines for schools, initiative petitions, recall petitions, central voter file, political party organization, appointment of election judges and poll clerks, voter affidavits, statement of interests, political advertising disclaimers, certificates of endorsement, candidate petitions, spoiled ballot retention, canvassing boards, recounts, and city elections; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 15.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

1. At least ~~twenty~~ forty days before the election, the business manager shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all individuals who have indicated their intent to be candidates by meeting the provisions of section 15.1-09-08. The business manager shall notify the candidates as to the time and place of the drawing for position on the ballot.

**SECTION 2.** A new subsection to section 16.1-01-04 of the North Dakota Century Code is created and enacted as follows:

For purposes of this title, a qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.

<sup>102</sup> **SECTION 3. AMENDMENT.** Section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-09. Initiative or referendum petitions - Signature - Form - Circulation.**

- 1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature. The filed signature forms must be originals.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot petition title", and must be placed immediately before the full text of the measure.
- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.
- 2. ~~No person~~ An individual may not sign any initiative or referendum petition circulated pursuant to article III of the Constitution of North Dakota unless the ~~person~~ individual is a qualified elector. ~~No person~~ An individual may not sign any petition more than once, and each signer shall add the signer's complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition shall do so in the presence of the ~~person~~ individual circulating the petition. A referendum or initiative petition must be on a form prescribed by the secretary of state containing the following information:

REFERENDUM [INITIATIVE] PETITION  
TO THE SECRETARY OF STATE,  
STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request [House (Senate) Bill \_\_\_\_\_ passed by the \_\_\_\_\_ Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

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<sup>102</sup> Section 16.1-01-09 was also amended by section 3 of House Bill No. 1042, chapter 65.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name	Address
_____ (Chairman)	_____
_____	_____

BALLOT PETITION TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the ~~person~~ individual circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Residential Address or Complete Rural Route or General Delivery Address	City, State
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual

matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- Each copy of any petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota )  
 County of \_\_\_\_\_ ) ss.  
 (county where signed)

I, \_\_\_\_\_, being sworn, say that I am a qualified  
 (circulator)  
 elector; that I reside at \_\_\_\_\_;  
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each ~~person~~ individual whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the ~~person~~ individual whose name it purports to be.

\_\_\_\_\_  
 (signature of circulator)

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_,  
 at \_\_\_\_\_, North Dakota.  
 (city)

(Notary Seal) \_\_\_\_\_  
 (signature of notary)  
 Notary Public  
 My commission expires \_\_\_\_\_

- No petition ~~shall~~ may be circulated under the authority of article III of the Constitution of North Dakota by a ~~person~~ an individual who is less than eighteen years of age, nor ~~shall~~ may the affidavit called for by subsection 3 be executed by a ~~person~~ an individual who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.

5. When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that ~~person's~~ individual's knowledge, the petitions contain at least the required number of signatures. An elector's name may not be removed by the elector from a petition that has been submitted to and received by the secretary of state.
6. An initiative or referendum petition may be submitted to the secretary of state until midnight of the day designated as the deadline for submitting the petition.
7. An initiative petition may be circulated for one year from the date it is approved for circulation by the secretary of state.

**SECTION 4. AMENDMENT.** Section 16.1-01-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-09.1. Recall petitions - Signature - Form - Circulation.**

1. A request of the secretary of state for approval of a petition to recall an elected official or appointed official of a vacated elected office may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the recall; the printed name, signature, and address of the committee member; and notarization of the signature.
2. ~~A person~~ An individual may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the ~~person~~ individual is a qualified elector. ~~A person~~ An individual may not sign a petition more than once, and each signer shall add the signer's complete residential, rural route, or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the ~~person~~ individual circulating the petition. A petition must be in substantially the following form:

RECALL PETITION

We, the undersigned, being qualified electors request that \_\_\_\_\_ (name of the ~~person~~ individual being recalled) the \_\_\_\_\_ (office of ~~person~~ individual being recalled) be recalled for the reason or reasons of \_\_\_\_\_.

RECALL SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota and the political subdivision who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

		Complete Residential, Rural Route, or General Delivery Address
Name		
1.	_____ (Chairman)	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota for thirty days, and you are a United States citizen. All signers must add their complete residential, rural route, or general delivery address and date of signing. Every qualified elector signing a petition must do so in the presence of the ~~person~~ individual circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Complete Residential, Rural Route, or General Delivery Address	City, State
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

- 3. Each copy of a petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota )  
 ) ss.  
 County of \_\_\_\_\_ )  
 (county where signed)

I, \_\_\_\_\_, being sworn, say that I am a qualified  
 (circulator's name)  
 elector; that I reside at \_\_\_\_\_;  
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge

and belief each ~~person~~ individual whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the ~~person~~ individual whose name it purports to be.

\_\_\_\_\_  
(signature of circulator)

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, North Dakota.  
(city)

(Notary Seal) \_\_\_\_\_  
(signature of notary)  
Notary Public  
My commission expires \_\_\_\_\_

- 4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 2, the name of the ~~person~~ individual being recalled, the office from which that ~~person~~ individual is being recalled, and a list of the names and addresses of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
- 5. Circulators have one year to gather the required number of signatures of qualified electors on the recall petition from the date the secretary of state approves the recall petition for circulation.
- 6. A petition may not be circulated under the authority of article III of the Constitution of North Dakota or section 44-08-21 by a ~~person~~ an individual who is less than eighteen years of age, nor may the affidavit called for by subsection 3 be executed by a ~~person~~ an individual who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety.
- 6- 7. When recall petitions are delivered to the secretary of state or other filing officer with whom a petition for nomination to the office in question is filed, the chairman of the sponsoring committee shall submit to the secretary of state or other filing officer an affidavit stating that to the best of that ~~person's~~ individual's knowledge, the petitions contain at least the required number of signatures. An elector's name may not be removed by the elector from a recall petition that has been submitted to and received by the appropriate filing officer.
- 7- 8. The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information-gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the filing officer to be invalid may not be counted and all violations of law

discovered by the filing officer must be reported to the state's attorney for possible prosecution.

9. The filing officer shall call a special recall election to be held no sooner than ninety days nor later than one hundred days following the date the filing officer certifies the petition valid and sufficient. No special recall election may be called if that date would be within ninety days of the next scheduled election.
10. A notice of the recall election must be posted in the official newspaper thirty days before the candidate filing deadline, which is by four p.m. on the sixtieth day before the election. The official notice must include the necessary information for a candidate to file and have the candidate's name included on the ballot.
11. An official may not be recalled if the recall special election would be held during the same year in which the official's office would be included on the ballot.

**SECTION 5. AMENDMENT.** Section 16.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-01. Permanent central voter file.** A permanent, centralized electronic data base of voters, to be known as the central voter file, is established with the offices of the secretary of state and county auditors linked together by a centralized statewide system. The county auditor is chief custodian of the central voter file records in each county. The secretary of state ~~is responsible for maintaining~~ shall maintain the central voter file. The central voter file must be accessible by the secretary of state and all county auditors for purposes of preventing and determining voter fraud, making changes and ~~updating the central voter file~~ updates, and generating information, including pollbooks, reports, inquiries, forms, and voter lists.

**SECTION 6. AMENDMENT.** Section 16.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-02. Costs of creating and maintaining a central voter file.** The creation of the central voter file and its maintenance through June 30, 2011, must be paid for with funds from the state's election fund, provided the election fund contains adequate funding to create and maintain the central voter file. The creation of the central voter file and its maintenance through June 30, 2011, may not be paid for from funds in the secretary of state's budget, the state's general fund, or from county funds. Beginning July 1, 2011, the offices required to perform the functions and duties of this chapter shall bear the costs incurred in performing those duties and the secretary of state shall pay the costs of operating and maintaining the central voter file. As used in this section, costs of maintaining the central voter file mean costs of annual software licenses, hosting costs for the software in the state data center, costs of necessary enhancements to the software, and the costs for implementing the duties and responsibilities of the secretary of state's office relating to the central voter file.

**SECTION 7. AMENDMENT.** Section 16.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-05. Entry of new voters into the central voter file - Query of the central voter file for double voting - ~~Verification by mail~~ - Challenges - Postelection verification.**

1. Within ~~sixty~~ forty-five days following an election, the county auditor shall enter the name and required information of each individual who voted at the last election who is not already contained in the central voter file and update any required information requested and obtained at the last election for any individual contained in the central voter file.
2. The secretary of state, with the assistance of the county auditors, within ~~seventy~~ eighty-five days following an election, shall query the central voter file to determine if any individual voted more than once during the preceding election. The secretary of state shall immediately notify the county auditor and state's attorney in each affected county for further investigation.
3. ~~The county auditor shall mail to a random sampling of individuals contained in the central voter file a notice stating the individual's name and address as the name and address appear in the central voter file. The random sampling must be determined in the manner established by the secretary of state. The notice must request the individual to notify the county auditor if there is any mistake in the information.~~
4. Upon return of any nonforwardable mail from an election official, the county auditor shall ascertain the name and address of that individual. If the individual is no longer at the address recorded in the central voter file, the county auditor shall ~~designate the individual as "challenged"~~ transfer the voter to the correct precinct in the central voter file or notify the county of the voter's new residence so the voter record can be transferred to the correct county. ~~An individual designated as "challenged" shall comply with section 16.1-05-06 before being allowed to vote at the next election in that precinct. If a notice mailed at least sixty days after the return of the first nonforwardable mail is also returned by the postal service, the county auditor shall designate the individual as "inactive" in the central voter file.~~
- 5- ~~4.~~ Within ~~ninety~~ forty-five days after an election, the county auditor shall send ~~the a notice provided for under subsection 3~~ to each individual who was challenged on election day according to section 16.1-05-06. If a notice is returned as not deliverable, the county auditor shall attempt to determine the reason for the return. A county auditor who does not receive or obtain satisfactory proof of an individual's eligibility to vote shall notify immediately ~~notify~~ the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.

**SECTION 8. AMENDMENT.** Subsection 2 of section 16.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The state health officer shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by marriage since the last report. ~~Within sixty days after receiving a report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed~~

~~accordingly in the central voter file.~~ The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

**SECTION 9. AMENDMENT.** Section 16.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-07. Reporting changes of names - Changes to records in the central voter file.** The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by divorce or any order or decree of the court since the last report. ~~Within sixty days after receiving the report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file.~~ The secretary of state shall prepare and distribute a list of those individuals to each county auditor. Any individual who has obtained a protection order under section 14-07.1-03 or who is protected by a disorderly conduct restraining order under section 12.1-31.2-01 must be listed in the central voter file with a "secured active" designation. A "secured active" designation means a record maintained as an active voter for pollbook purposes, but otherwise is an exempt record. The state court administrator or the bureau of criminal investigation shall make available upon request of the secretary of state the name of each individual who has obtained such an order.

**SECTION 10. AMENDMENT.** Section 16.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-10. Posting voting history - Failure to vote - Individuals designated inactive.** ~~Within ninety~~ seventy-five days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the 2010 calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

**SECTION 11. AMENDMENT.** Section 16.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-13. Information contained in pollbooks generated from the central voter file.** The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the day before an election. With the exception of a record designated "secured active" and the unique identifier, which are exempt records, the precinct pollbooks are open records under section 44-04-18. ~~Between the fifteenth day before the election and the day of the election, no changes or updates to records of individuals contained in the central voter file or a pollbook generated from the central voter file may be made, other than changes related to the status of an individual voting early or an individual requesting and returning an absent voter's ballot.~~ The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete legal name of the individual.

2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides. A ballot-style code identifying this information may be used in place of the information required by this subsection.
6. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

**SECTION 12. AMENDMENT.** Section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-03-03. Caucus business and elections - Political parties entitled to elect committeemen.**

1. Each precinct caucus shall elect a chairman, committeemen as provided in subsection 3, and other officers as may be provided by party rules. The caucus may also discuss party policies, candidates, and any other business as prescribed by party rules.
2. No political organization is entitled to elect a precinct committeeman at its precinct caucus unless:
  - a. The organization nominated and had printed on the ballot at the last preceding ~~presidential~~ general election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor, attorney general, or secretary of state; and
  - b. The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors or for governor, attorney general, or secretary of state within this state at that election.
3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or fraction thereof, cast for the party's presidential electors, governor, attorney general, or secretary of state in the precinct in the last ~~presidential~~ general election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of the precinct in which the committeeman resides and must be elected for a two-year term.

**SECTION 13. AMENDMENT.** Section 16.1-03-19 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-03-19. Organizations allowed to nominate statewide and legislative candidates.** A political organization may not endorse candidates or have candidates petition for president, vice president, Congress, statewide office, or legislative office as set forth in chapter 16.1-11, unless the organization, ~~political or otherwise:~~

1. Had printed on the ballot at the last preceding ~~presidential~~ general election the names of a set of presidential electors pledged to the election of the party's candidate for president and vice president ~~or, a candidate for governor, a candidate for attorney general, or a candidate for secretary of state~~ and those candidates for presidential electors ~~or, governor, attorney general, or secretary of state~~ received at least five percent of the total vote cast for presidential electors ~~or, the office of governor, attorney general, or secretary of state~~ within this state at that election; and
2. Organized according to all requirements of this chapter; or
3. Filed a petition with the secretary of state as set forth in section 16.1-11-30.

**SECTION 14. AMENDMENT.** Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-01. Election officers.** At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:
  - a. Except as provided in subdivision b, in all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
  - b. In all multiprecinct polling locations containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
  - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

All appointments required to be made under this section must be made at least forty days preceding an election.

2. The election judges must be appointed in the following manner:

a. Except as provided in subdivision b:

(1) The election judges for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge.

3- (2) The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative districts but who reside within the county.

b. For special elections involving only no-party offices, the election official responsible for the administration of the election with the approval of the majority of the members of the applicable governing body shall appoint the election judges for each polling location.

4- 3. If at any time before or during an election, it ~~shall be made to appear~~ appears to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge is disqualified under this chapter, the inspector shall remove that judge at once and shall fill the vacancy by appointing a qualified ~~person~~ individual of the same political party as that of the judge removed. If the disqualified judge had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

5- 4. ~~With the approval of the majority of the board of county commissioners, the county auditor may appoint as many poll clerks as are necessary for the proper administration of a polling place.~~ The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. However, no fewer than two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and on any necessary technical knowledge.

**SECTION 15. AMENDMENT.** Section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-02. Qualifications of members of the board of election - Oath of office.**

1.
  - a. Except as provided in subdivisions b and d, every member of the election board and each poll clerk must be a qualified elector of a precinct within the polling place boundaries in which the ~~person~~ individual is assigned to work and must be eligible to vote at the polling place to which the ~~person~~ individual is assigned unless the county auditor has exhausted all means to appoint election judges and clerks from within the voting precinct under subsection 2 of section 16.1-05-01.
  - b. A student enrolled in a high school or college in this state who has attained the age of sixteen is eligible to be appointed as a poll clerk if the student possesses the following qualifications:
    - (1) Is a United States citizen or will be a citizen at the time of the election at which the student will be serving as a member of an election board;
    - (2) Is a resident of this state and has resided in the precinct at least thirty days before the election; and
    - (3) Is a student in good standing attending a secondary or higher education institution.
  - c. A student appointed as a poll clerk may be excused from school attendance during the hours that the student is serving as a poll clerk, including training sessions, if the student submits a written request to be absent from school signed and approved by the student's parent or guardian and by the school administrator and a certification from the ~~district party chairman~~ or county auditor stating the hours during which the student will serve. A student excused from school attendance under this subdivision may not be recorded as being absent on any date for which the excuse is operative. No more than two students may serve as poll clerks on an election board.
  - d. An individual who has attained the age of sixteen and has graduated from high school or obtained a general education degree from an accredited educational institution is eligible to be appointed as a poll clerk if the individual meets the qualifications of paragraphs 1 and 2 of subdivision b.
2. ~~No person~~ An individual may ~~not~~ serve as a member of the election board or as a poll clerk ~~who~~ if the individual:
  - a. Has anything of value bet or wagered on the result of an election.
  - b. Is a candidate in ~~the~~ that election ~~at which the person is serving~~.
  - c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in ~~the~~ that election ~~at which the person is serving~~.
3. ~~Prior to~~ Before assuming ~~their~~ the duties, ~~all members~~ each member of the election board and ~~the~~ each poll ~~clerk~~ clerk severally shall take and subscribe an oath in substantially the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

The oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to each other and to the poll clerks. The ~~person~~ individual administering the oath shall cause an entry thereof to be made and subscribed by that ~~person~~ individual and prefixed to each pollbook.

4. A ~~person~~ An individual serving as a member of the election board ~~shall, prior to~~ before each election, shall attend a period of instruction conducted by the county auditor or the county auditor's designated representative, provided that such the period of instruction has been conducted since the appointment of the election judges or election inspector.
5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a ~~person~~ an individual to serve in the absent ~~person's~~ individual's place. In filling a vacancy in the office of election judge ~~or clerk~~, the remainder of the board shall select a ~~person~~ an individual of the absent ~~person's~~ individual's political party if such a ~~person~~ an individual is reasonably available. The office of election inspector ~~or clerk~~ may be filled by any qualified ~~person~~ individual without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall call the county auditor, city auditor, or school business manager, as appropriate, for instructions and then orally elect a board as nearly as possible in conformity with ~~the~~ provisions of this section.

**SECTION 16. AMENDMENT.** Subsection 3 of section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

3. The election inspector shall assign the poll clerks; ~~an equal number from each political party represented on the election board~~, to perform the function of maintaining the pollbook. The designated poll clerks shall maintain the pollbook. The pollbook must contain the name and address of each ~~person~~ individual voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.

**SECTION 17. AMENDMENT.** Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-06. Challenging right of ~~person~~ to vote - Identification or affidavit required - Penalty for false swearing - Optional poll checkers.**

1. ~~One~~ Three poll ~~challenger~~ challengers appointed by the district chairman of each political party represented on the election board ~~is~~ are entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than ~~one~~ three poll ~~challenger~~ challengers from each political

party ~~is~~ are entitled to be in attendance at each polling place at any one time.

2. Any member of the election board may challenge the right of an individual to vote if the election board member has knowledge or has reason to believe the individual is not a qualified elector. A poll challenger may request members of the election board to challenge the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
  - a. The individual offering to vote does not meet the age or citizenship requirements.
  - b. The individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
  - c. Except as provided in section 16.1-01-05, the individual offering to vote physically resides outside of the precinct.
  - d. The individual offering to vote does not meet the residency requirements provided in section 16.1-01-04.
  - e. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.
3. If after an election board member has requested that the individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2 and the identification is not provided or does not adequately confirm the eligibility of the challenged individual, the challenged individual may not vote unless the challenged individual executes an affidavit, acknowledged before ~~the~~ an election ~~inspector~~ board member, that the challenged individual is a legally qualified elector of the precinct.
4. The affidavit must include:
  - a. ~~The name, present address, and any contact telephone number of the affiant and the address of the affiant at the time the affiant last voted.~~
  - b. The address of the affiant.
  - c. The birth date of the affiant.
  - d. The contact telephone number of the affiant.
  - e. The address of the affiant at the time the affiant last voted.
  - f. The previous last name of the affiant if it was different when the affiant last voted.

- g. The identification number and state of any state-issued identification regardless of the state in which the identification was issued, if available.
  - e. h. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
  - d. i. Notice of the penalty for making a false affidavit and that the county auditor ~~may~~ is required to verify the affidavit.
  - j. A notice indicating that the affidavit is not an open record, but that information identifying who voted after executing an affidavit is an open record as part of the pollbook, except for any individual listed as secured active in the central voter file under section 16.1-02-13.
  - e. k. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor shall verify the affidavits must ~~also~~ be prominently displayed at the polling place in a form prescribed by the secretary of state. An individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.
  6. ~~In addition to the poll challenger, not more than two poll checkers appointed by the~~ The district chairman of each political party represented on the election board ~~may be in attendance at each~~ appoint poll checkers to a polling place, provided the poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. ~~The poll~~ Poll challengers ~~and poll checkers~~ must be qualified electors of the district in which they are assigned.
  7. No poll challenger or checker may be a member of the election board.
  8. The district chairman shall notify the county auditor of each county contained in the legislative district ~~before the third one~~ day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

**SECTION 18. AMENDMENT.** Section 16.1-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-09-02. Statement of interests to be filed.** Every candidate for elective office shall sign and file a ~~the~~ statement of interests as required by this chapter. In a year when a president and vice president of the United States are to be chosen, presidential and vice presidential candidates shall file with the secretary of state either a statement of interests as required by this chapter or a copy of the personal disclosure statement that is required by the federal election commission. Candidates for elective office who are required to file such statements shall do so with the filing officer for that election at the time of filing a certificate of nomination, a certificate of endorsement, a petition of nomination, or a certificate of write-in candidacy, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate. ~~A person~~ An individual who has filed a statement as the result of candidacy in a primary election need not refile

before running in the following general election. A write-in candidate who is not required to file a certificate of write-in candidacy shall file the statement of interests after the candidate's election at the time of filing the required oath of office. Every ~~person~~ individual who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment. A filing officer may not include a candidate's name on the ballot if an error is discovered on the statement and the candidate is unable to or refuses to make the necessary correction before the sixtieth day before the election.

**SECTION 19. AMENDMENT.** Section 16.1-10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements.** Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, or by a measure committee, or a corporation making a direct expenditure either for or against a measure, must disclose on the advertisement the name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible ~~person~~ individual from the political party, association, or partnership. The name of the person or ~~political party~~ paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible ~~person~~ individual from the political party, association, or partnership. In every political advertisement in which the name of the person or ~~political party~~ paying for the advertisement is disclosed, the first and last name of any named ~~person~~ individual must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

**SECTION 20. AMENDMENT.** Section 16.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-06. State candidate's petition or political party certificate of endorsement required to get name on ballot - Contents - Filing.**

1. Every candidate for United States senator, United States representative, a state office except the office of state senator or state representative, and judges of the supreme and district courts shall present to the secretary of state, between the first date candidates may begin circulating nominating petitions according to this chapter and before four p.m. of the sixtieth day ~~prior to~~ before any primary election, ~~present to the secretary of state~~ either:
  - a. A The certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, and telephone number, the title of the

office to which the candidate aspires, and the party which the candidate represents; or

- 2- b. A The nominating petition containing the following:
- a- (1) The candidate's name, post-office address, and telephone number, and the title of the office to which the candidate aspires, the appropriate district judgeship number if applicable, and whether the petition is intended for nomination for an unexpired term of office if applicable.
  - b- (2) The name of the party the candidate represents if the petition is for an office under party designation.
  - e- (3) The signatures of qualified electors, the number of which must be determined as follows:
    - (~~4~~) (a) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates for the same position at the last general election. However, no more than three hundred signatures may be required.
    - (~~2~~) (b) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
    - (~~3~~) (c) If the office is under the no-party designation, at least three hundred signatures.
  - e- (4) The mailing address and the date of signing for each signer.
2. If the petition or certificate of endorsement is for the office of governor or lieutenant governor, ~~it~~ the petition or certificate must contain the names and other information required of candidates for both those offices. If the petition or certificate of endorsement is mailed, it must be in the possession of the secretary of state before four p.m. of the sixtieth day ~~prior to~~ before the primary election.

**SECTION 21. AMENDMENT.** Section 16.1-13-32 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-13-32. Securing new ballot upon spoiling of others.** If any elector spoils a ballot, the elector may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each paper ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county auditor ~~from whom received~~ recorder.

**SECTION 22. AMENDMENT.** Section 16.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-15. County canvassing board - Composition.** The county canvassing board must be composed of the county recorder, county auditor, chairman of the board of county commissioners, and a representative of each of the

two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected. An individual who served on an election board during the election may not serve as a political party representative on the canvassing board for that same election. The district chairmen of the political parties from each legislative district within the county shall appoint the respective political party representative. The county canvassing board must be comprised of at least five members, and both political parties must be represented. Each political party from each legislative district within a county may request representation on the canvassing board if there is equal representation from each of the political parties. For any special county election when the county is composed of more than one legislative district and the election does not involve any legislative or statewide office, the county canvassing board must be composed of the county recorder, county auditor, chairman of the board of county commissioners, and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected.

**SECTION 23. AMENDMENT.** Section 16.1-15-16 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-16. Qualifications of members of canvassing board - Replacements - Quorum.** ~~No~~ A member of the county canvassing board who ~~would not be eligible to serve as a member of the election board pursuant to subsection 2 of section 16.1-05-02~~ may serve on the county canvassing board has anything of value bet or wagered on the result of the election may not serve on the board. When a member of the county canvassing board is a candidate or husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate for any office for which that member canvasses the votes, the member must be removed from that portion of the canvass. If any of the members of the board other than the representatives of the two political parties are disqualified or cannot serve for any other reason, the county commissioners who would be qualified to serve on the board shall appoint alternates to serve in the place of those members of the board who are disqualified. If any of the representatives of the district committees of the two parties are disqualified or cannot serve for any other reason and if the party wishes to have representation, the district chairmen shall appoint an alternate from their respective district committees to act as a member of the county canvassing board. A majority of the confirmed members of the board or their duly appointed alternates constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof.

**SECTION 24. AMENDMENT.** Section 16.1-15-34 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-34. Member of state canvassing board - When disqualified.** A member of the state canvassing board who has anything of value bet or wagered on the result of the election may not serve on the board. When a member of the state canvassing board is a candidate or husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate for any office for which that member canvasses the votes, the member ~~shall~~ must be removed from that portion of the canvass. If a quorum still exists, the remaining members shall canvass the votes for that office. If a quorum does not exist, another state officer, summoned according to the authorization granted the state canvassing board in section 16.1-15-33, ~~be required to~~ canvass the votes for that office.

**SECTION 25. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-16-01. Election recounts.** A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, county, or city office, or for the approval or disapproval of any measure, question, or bond issue submitted to the qualified electors of this state or one of its political subdivisions must be conducted according to guidelines established by the secretary of state and as follows:

1. A recount must be conducted when:
  - a. Any ~~person~~ individual failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
  - b. Any ~~person~~ individual failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
  - c. A question, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
  - a. Any ~~person~~ individual who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
  - b. Any ~~person~~ individual who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections and city elections that are combined with the county and by the state canvassing board in the case of presidential, congressional, state, judicial district, multicounty district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
  - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
  - b. The county auditor when the recount is for a county office or city office when a city election is combined with the county.
4. Within four days after the canvass of the votes by the state canvassing board in the case of presidential, congressional, state, judicial district, multicounty district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by

subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date or dates of the recounts of legislative contests to be held within seven days after giving notice to the affected auditors that recounts must be conducted. The secretary of state shall fix the date or dates of the recounts of statewide races to be held within fourteen days after giving notice to the auditors that recounts must be conducted. Within four days after the canvass of votes by the county canvassing board or other political subdivision canvassing board, the county auditor or other political subdivision election official shall fix the date for recounts limited to the county, those cities within the county which combined the election with the county, or other political subdivision. The date must be within eight days after the canvass. In all recount proceedings, the county auditor or other election official, as appropriate, shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.

5. ~~Recount employees.~~ For recounts conducted by counties of federal, state, district, and county offices, measures, and questions, the county auditor must conduct the recount and may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper and electronic voting system ballots and associated records, whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law, including that the ballots were properly initialed and that the initials found on the ballots are verified as those of the precinct election board members. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the county recorder shall perform the duties required of the county auditor by this section. For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.
6. a. ~~Recount participants.~~ The ~~persons~~ individuals entitled to participate at the recount are:
  - a- (1) Each candidate involved in the recount, either personally or by a representative.
  - b- (2) A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.
- b. The ~~persons~~ individuals allowed to participate may challenge the acceptance or exclusion of any ballot. The ~~person~~ individual challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as the auditor or election official ~~deems~~ determines proper and ~~shall~~ then shall set the ballot aside with a notation that it was challenged and how it was counted.

7. ~~Recount board.~~ At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the county recorder. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. ~~No person~~ An individual may not serve on the recount board if the ~~person~~ individual has anything of value bet or wagered on the result of the election, is a candidate for the office being recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate involved in the recount. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. The recount board is authorized to initial all absentee ballots cast ~~pursuant to~~ under section 16.1-07-09 that were not considered or counted at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor or other political subdivision election official shall take appropriate steps to safeguard the ballots.
8. The county auditor or other election official shall certify the results of the recount no later than three days after the recount. The recount result is the official result of the election in the county or other political subdivision. The county auditor or other election official shall prepare a corrected abstract of the votes. In a recount limited to the county, city, or other political subdivision, if the corrected abstract shows no change in the outcome of the election, no further action may be taken. If the corrected abstract changes the outcome of the election, the county auditor or other election official shall issue certificates of nomination or election accordingly and shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.
9. In presidential, congressional, statewide, judicial district, multicounty district, or legislative recounts, the county auditor ~~shall~~, no later than three days after the recount, shall send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state ~~shall~~ shall immediately shall assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.

10. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a presidential, congressional, state, judicial district, multicounty district, or legislative election must be paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the ~~person~~ individual requesting the recount.
11. This section also applies to city elections that are not combined with the county except the city auditor, to the extent applicable, shall perform the duties of the county auditor.

**SECTION 26. AMENDMENT.** Section 40-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-03. Regulations governing election of commissioners.** The members of the board of city commissioners ~~shall~~ must be elected at large and not by wards. Each voter may vote for one of the candidates for the office of president of the board of city commissioners and for as many candidates for the office of city commissioner as there are commissioners to be elected. Candidates for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election. A candidate may run for only one office in a city at any given election.

**SECTION 27. AMENDMENT.** Subsection 1 of section 40-21-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline along with a list of the offices to appear on the ballot must be published in the official newspaper of the city as provided by section 40-01-09.

**SECTION 28. AMENDMENT.** Section 40-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-21-07. Petition for nomination of elective official in cities - Signatures required - Withdrawal of petition - Contents.** A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. A candidate shall also file a statement of interests as required by section 16.1-09-02. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city, if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed,

it must be in the possession of the city auditor before four p.m. on the sixtieth day ~~prior to~~ before the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor at least sixty days and before four p.m. on the sixtieth day before the holding of the election. A candidate may withdraw the candidate's nominating petition at any time before the applicable deadlines for filing nominating petitions provided for in this section. Nominating petitions required by this section may not be circulated or signed more than ninety days before the date when nominating petitions must be filed ~~pursuant to~~ under this section. Any signatures to a nominating petition obtained more than ninety days before that date may not be counted. ~~Candidates~~ A candidate for city council may run for either the office of mayor or council member but not both in the same election. ~~Candidates~~ A candidate for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election. A candidate may run for only one office in a city at any given election.

**SECTION 29. AMENDMENT.** Section 44-08-21 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-21. Recall of elected officials of political subdivisions.**

1. An elected official of a political subdivision, except an official subject to recall ~~pursuant to~~ under section 10 of article III of the Constitution of North Dakota, is ~~subject to~~ recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.
2. A recall petition must include a stated reason for the recall and be approved as to form ~~prior to~~ before circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.
3. Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed unless that filing officer is the ~~person~~ individual subject to recall, in which case the petition must be filed with the secretary of state. The filing officer with whom the petition is filed shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than eighty ninety days nor later than ninety one hundred days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would

be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition that has been submitted to and received by the appropriate filing officer.

4. The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the sixtieth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a ~~person~~ an individual to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall.

<sup>103</sup> **SECTION 30. AMENDMENT.** Subsection 2 of section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The question of the adoption of the fee must be submitted on a ballot on which the ~~ballot petition~~ title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.

**SECTION 31. LEGISLATIVE COUNCIL STUDY OF RESIDENCY STATUS.**

During the 2009-10 interim, the legislative council shall consider studying the rules for determining residency status under state law, including an examination of the determination of residency for voting and higher education tuition purposes; for obtaining game and fish licenses, motor vehicle registrations, and motor vehicle operator's licenses; and for taxation purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009

Filed April 23, 2009

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<sup>103</sup> Section 57-40.6-02 was also amended by section 1 of House Bill No. 1412, chapter 569.

**CHAPTER 181****SENATE BILL NO. 2307**

(Senator Potter)  
(Representative Wrangham)

AN ACT to repeal section 16.1-03-20 of the North Dakota Century Code, relating to presidential preference caucuses.

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

**SECTION 1. REPEAL.** Section 16.1-03-20 is repealed.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 182****SENATE BILL NO. 2319**

(Senators Dever, Nelson, Oehlke)  
(Representatives Boehning, L. Meier, Wolf)

AN ACT to amend and reenact sections 16.1-07-04, 16.1-07-06, 16.1-07-08, 16.1-07-12, 16.1-07-12.1, 16.1-07-15, 16.1-11.1-02, 16.1-11.1-05, 16.1-12-02, 16.1-12-02.1, 16.1-12-02.2, and 16.1-12-02.3 of the North Dakota Century Code, relating to absentee voting, mail ballot voting, certificates of nomination by petition for president, write-in votes, and certificates of nomination by petition for independent candidates.

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

**SECTION 1. AMENDMENT.** Section 16.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-04. When ballots furnished proper officials.** The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days before the holding of any general, special, or primary state election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections, the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots shall prepare and have printed and available for distribution to the public at least forty days before the holding of any city or school election a sufficient number of absent voter's ballots for the use of all voters likely to require such ballots for that election. Officers authorized to distribute absent voter's ballots under this chapter shall ensure all ballots used as absent voter's ballots are secure at all times and accessible only to those persons under the officer's supervision for distribution. If an election official personally distributes and collects an absent voter's ballot outside the election official's office, appointed election judges from an election board shall accompany the election official along with the ballot to and from the voter's location and be present while the voter is marking the ballot.

**SECTION 2. AMENDMENT.** Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-06. Application form.**

1. Application for an absent voter's ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following information:
  - a. The applicant's name.
  - b. The applicant's current or most recent North Dakota residential address.

- c. The applicant's mailing address.
- d. The applicant's current contact telephone number.
- e. The election for which the ballot is being requested.
- f. The date of the request.
- g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.
- h. The applicant's signature.
- i. A space for the voter to ~~include the voter's precinct or voting location, if known~~ indicate the voter's status as a citizen living outside the United States, a uniformed servicemember living away from the voter's North Dakota residence, or a family member of the uniformed servicemember living away from the voter's North Dakota residence.
- j. The applicant's birth date and year.
- k. The applicant's motor vehicle operator's license or nondriver identification number, if available.

If the applicant is unable to sign the applicant's name, the applicant shall mark (X) or use the applicant's signature stamp on the application in the presence of a disinterested ~~person~~ individual. The disinterested ~~person~~ individual shall print the name of the ~~person~~ individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested ~~person's~~ individual's own name following the printed name together with the notation "witness to the mark".

2. The application for a qualified elector serving on active duty as a uniformed service member or a family member who is a qualified elector and stationed at a location other than that individual's voting residential address must include the following additional information if the voter desires to vote by facsimile or electronic mail:
  - a. Facsimile telephone number; or
  - b. Electronic mail address.
3. The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail.

**SECTION 3. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-08. Delivering ballots - ~~Envelope~~ Envelopes accompanying - Statement on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.**

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in

which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and ~~an~~ a secrecy envelope and a return envelope must be enclosed with the ballot or ballots. The front of the return envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed voter's affidavit in substantially the following form:

Precinct \_\_\_\_\_  
 Name \_\_\_\_\_  
 Residential Address \_\_\_\_\_  
 City \_\_\_\_\_ ND Zip Code \_\_\_\_\_

Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.

Applicant's Signature \_\_\_\_\_  
 Date \_\_\_\_\_

If the absent voter is unable to sign the voter's name, the voter shall mark (X) or use the applicant's signature stamp on the statement in the presence of a disinterested ~~person~~ individual. The disinterested ~~person~~ individual shall print the name of the ~~person~~ individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested ~~person's~~ individual's own name following the printed name together with the notation "witness to the mark".

3. Each ~~person~~ individual requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.

4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any ~~person~~ individual of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

**SECTION 4. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving.** At any time ~~between the opening beginning on the day before election day and the closing of the polls on election day~~, the election ~~judges clerks and board members~~ of the relevant precinct first shall open the outer envelope and compare the signature on ~~such~~ the application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of ~~such the~~ precinct and has not voted at the election, they shall open the absent voter's envelope in ~~such~~ a manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after initialing the same as other ballots are initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. The votes from these cast ballots may not be tallied and the tabulation reports may not be generated until the polls have closed on election day. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting ~~such~~ the ballot.

**SECTION 5. AMENDMENT.** Section 16.1-07-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for the purpose of counting all absentee ballots cast in an election in that county. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners chooses to establish an absentee ballot precinct according to this section, the following provisions apply:
  - a. The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the

inspector and an equal number of representatives from each political party represented on an election board in the county, as set forth in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.

- b. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
- c. ~~On the day of the election, the~~ The absentee ballot counting board shall occupy a location designated by the county auditor which must be open to any ~~person~~ individual for the purpose of observing the counting process.
- d. The absentee ballots must be opened and handled as required in section 16.1-07-12. The absentee ballot counting board may commence counting the absentee ballots at the same time as any precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

<sup>104</sup> **SECTION 6. AMENDMENT.** Section 16.1-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-15. Early voting precinct - Election board appointment - Closing and canvassing.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixtieth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. At the determination of the county auditor, more than one voting location may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
  - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once

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<sup>104</sup> Section 16.1-07-15 was also amended by section 1 of House Bill No. 1461, chapter 183.

each week for three consecutive weeks immediately before the day of the election.

- b. The county auditor shall appoint the early voting precinct election board for each voting location that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
- c. The county auditor, with the consent of the board of county commissioners, shall designate ~~a space~~ each early voting location in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02; ~~to locate the early voting precinct.~~
- d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
  - (1) The pollbooks and access to any electronically maintained pollbooks.
  - (2) The ballot boxes containing voted ballots.
  - (3) Any void, spoiled, and unvoted ballots.
- e. Ballot boxes containing ballots cast at an early voting ~~precinct~~ location may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.
- f. ~~The~~ Each early voting ~~precinct~~ location may be closed, as provided in chapter 16.1-15, at the end of the last ~~business~~ day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.
- g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

**SECTION 7. AMENDMENT.** Section 16.1-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-02. Application for mail ballots.** The county auditor shall mail an application form for a mail ballot to each ~~person~~ individual listed in the central voter file for the county on one date no sooner than the ~~forty-fifth~~ fiftieth day before the election and no later than the ~~thirtieth~~ fortieth day before the election. The county

auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The application form for a mail ballot must be in substantially the following form: provided in section 16.1-07-06.

I, \_\_\_\_\_, am or will be a qualified elector and  
(please print name)

to my best knowledge and belief am or will be entitled to vote at the election. I apply for an official mail ballot to be voted by me at that election. I understand that it is a criminal offense to knowingly vote when not qualified to do so.

I have or will have resided at the below address for at least thirty days before the election. My telephone number is \_\_\_\_\_.

Dated \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_, North Dakota \_\_\_\_\_  
(City) (Zip Code)

**SECTION 8. AMENDMENT.** Section 16.1-11.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-05. Replacement ballots.** An elector may obtain a replacement ballot if a mail ballot is destroyed, spoiled, lost, or not received by the elector. The elector seeking a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and shall present the statement to make the elector's request of the county auditor or appropriate election officer no later than four p.m. on the day before the election.

**SECTION 9. AMENDMENT.** Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02. Certificates of nomination by petition - Form and contents.** Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. Each Except for candidates for the office of president of the United States, each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. A candidate for the office of the president of the United States

may begin gathering the signatures for the certificate of nomination on the first day of January of a presidential election year and shall submit the petition to the secretary of state before four p.m. on the sixtieth day before the general election. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

**SECTION 10. AMENDMENT.** Section 16.1-12-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02.1. Applicant's name placed upon ballot - Affidavit to accompany petition.** Upon receipt by the secretary of state of the certificate of nomination provided for in section 16.1-12-02 accompanied by the following affidavit, the secretary of state shall place the applicant's name upon the general election ballot. The affidavit must be substantially as follows:

State of North Dakota            )  
   ) ss.  
 County of \_\_\_\_\_            )

I, \_\_\_\_\_, being sworn, say that I reside at \_\_\_\_\_, in the city of \_\_\_\_\_, state of North Dakota; that I am a candidate for nomination to the office of \_\_\_\_\_ to be chosen at the general election to be held on \_\_\_\_\_, \_\_\_\_\_, and I request that my name be printed upon the general election ballot as provided by law I have identified my ballot name below. I understand that nicknames are allowed as part of my ballot name, but titles and campaign slogans are not permissible. I have reviewed the requirements to hold office and I certify that I am qualified to serve if elected.

\_\_\_\_\_  
Ballot name requested

Date \_\_\_\_\_

\_\_\_\_\_  
Candidate's signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

## NOTARY SEAL

**SECTION 11. AMENDMENT.** Section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02.2. Counting of write-in votes - Certificate of candidacy by write-in candidates.**

1. An election board or canvassing board may not count or be required to officially report any write-in vote for any:
  - a. ~~Person~~ Individual who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
  - b. Fictitious person; ~~nonperson~~; or ~~person~~ individual clearly not eligible to qualify for the office for which the vote was cast.
  - c. Statement concerning the candidates.
  - d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the county recorder no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.
  - e. Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.
  - f. Write-in votes that do not need to be individually canvassed based on the requirements of this subsection must be listed on the ~~county~~ official canvass report as "scattered write-ins".

2. A ~~person~~ An individual who intends to be a write-in candidate for president of the United States ~~at the presidential preference contest~~ or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the ~~contest~~ or election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the ~~contest~~ or election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.
3. A ~~person~~ An individual who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.
4. A ~~person~~ An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section 16.1-08.1-02 complete through the day of the filing of the certificate.
5. A certificate under this section is not required when:
  - a. No names will appear on the ballot for an office;
  - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
  - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make. ~~When certificates of write-in candidacy are not required under this chapter, all write-in votes must be counted.~~

A person

6. An individual required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

**SECTION 12. AMENDMENT.** Section 16.1-12-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02.3. Nominating petition for an independent candidate not to be circulated more than ~~ninety~~ one hundred fifty days ~~prior to~~ before filing time.** A petition provided for in this chapter may not be circulated or signed more than ~~ninety~~ one hundred fifty days before the date when any petition must be filed under ~~the provisions of~~ this chapter. Any signatures to a petition obtained more than ~~ninety~~ one hundred fifty days before that date may not be counted.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 183****HOUSE BILL NO. 1461**

(Representatives Schatz, Nottestad, Wald)  
(Senators Andrist, Hogue, Nodland)

AN ACT to amend and reenact subdivision c of subsection 2 of section 16.1-07-15 of the North Dakota Century Code, relating to restrictions applicable to early voting precincts; and to provide a penalty.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Subdivision c of subsection 2 of section 16.1-07-15 of the North Dakota Century Code is amended and reenacted as follows:

- c. The county auditor, with the consent of the board of county commissioners, shall designate a space in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, to locate the early voting precinct. With respect to polling places at early voting precincts, "election day" as used in sections 16.1-10-03 and 16.1-10-06.2 includes any time an early voting precinct polling place is open.

Approved April 21, 2009

Filed April 22, 2009

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<sup>105</sup> Section 16.1-07-15 was also amended by section 6 of Senate Bill No. 2319, chapter 182.

**CHAPTER 184****HOUSE BILL NO. 1490**

(Representatives Boehning, Conklin, Karls)  
(Senators Cook, Dotzenrod)

AN ACT to amend and reenact subsection 5 of section 16.1-08.1-01, section 16.1-08.1-03.2, and subsection 1 of section 16.1-08.1-03.9 of the North Dakota Century Code, relating to campaign finance.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any ~~person~~ individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.

**SECTION 2. AMENDMENT.** Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.2. Political committee registration.** A statewide candidate, ~~statewide candidate committee, or political action committee, multicandidate committee, or a measure committee, as described~~ defined in section 16.1-08.1-01 shall register its name, address, and its agent's name and address with the secretary of state each calendar year in which it receives any contribution. The registration must be completed within fifteen business days of the receipt of any contribution or expenditure made and must be submitted with a registration fee of twenty-five dollars. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office, a political party, or political committee in this state is not required to register as a political committee according to this section if the political committee reports according to section 16.1-08.1-03.7. Registration under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

**SECTION 3. AMENDMENT.** Subsection 1 of section 16.1-08.1-03.9 of the North Dakota Century Code is amended and reenacted as follows:

1. A judicial district candidate or a candidate committee for a judicial district candidate shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:

- a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
  - b. The aggregated amount of the contributions from each listed contributor;
  - c. The date the last contribution was received from each listed contributor;
  - d. The gross total of all contributions received in excess of two hundred dollars;
  - e. The gross total of all contributions received of two hundred dollars, or less; and
- e. f. The cash on hand in the filer's account at the start and close of the reporting period.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 185****HOUSE BILL NO. 1343**  
(Representative Kretschmar)

AN ACT to amend and reenact section 16.1-11.1-01 of the North Dakota Century Code, relating to polling places for elections held by mail ballot.

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

**SECTION 1. AMENDMENT.** Section 16.1-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-01. Counties may conduct mail ballot elections - Polling places - Records.** The board of county commissioners of a county may conduct an election by mail ballot. The mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate ~~at least one~~ or more polling ~~place~~ places in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 186****HOUSE BILL NO. 1452**  
(Representatives Rust, Mock, Nathe)  
(Senators Hogue, Schneider)

AN ACT to create and enact section 16.1-13-08.1 of the North Dakota Century Code, relating to the call for a special election to fill a vacancy in the United States House of Representatives due to a catastrophic circumstance.

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

**SECTION 1.** Section 16.1-13-08.1 of the North Dakota Century Code is created and enacted as follows:

**16.1-13-08.1. Special election to fill a vacancy in the United States House of Representatives due to a catastrophic circumstance.** If a vacancy occurs in the office of representative in Congress due to a catastrophic circumstance in which one hundred or more representatives across the United States are no longer able to serve and the next regular or special election is more than seventy-five days in the future, the governor shall immediately issue a writ of election calling a special election to fill the vacancy. The date of the election shall be forty-nine days from the date of the proclamation and the following deadlines shall apply:

1. Certificate of endorsement as described in section 16.1-11-09, affidavits of candidacy described in section 16.1-11-10, and statements of interest described in section 16.1-09-03 for those candidates nominated by political parties currently established in the state shall be filed with the secretary of state by four p.m. on the fortieth day before the election.
2. If the election occurs in an election year, the precincts previously established by the county shall be utilized.
3. If the election occurs in a year without a scheduled election, the board of county commissioners must establish the precinct boundaries by the fortieth day before the election.
4. The secretary of state shall certify to the county auditors the names of the candidates for the election on the thirty-ninth day before the election.
5. Absentee ballots shall be made available to qualified electors by the thirtieth day before the election.

Approved April 21, 2009  
Filed April 22, 2009

# ENERGY

## CHAPTER 187

### SENATE BILL NO. 2291 (Senators Erbele, Dotzenrod, Wanzek) (Representatives Brandenburg, D. Johnson, Onstad)

AN ACT to amend and reenact section 17-03-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting community expansion fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 17-03-04 of the North Dakota Century Code, as effective after July 31, 2009, is amended and reenacted as follows:

#### **17-03-04. (Effective after July 31, 2009) Fund moneys - Eligible uses.**

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol production facility or to a livestock operation for the following eligible uses:
  - (1) Purchase or construction of real property.
  - (2) Expansion of facilities.
  - (3) Purchase or installation of equipment, including a biodigester system.
- b. The loan funds may not be used to refinance any existing debt or for the relocation within this state of the biodiesel or ethanol production facility or the livestock operation.
2. a. The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed five hundred thousand dollars to any single biodiesel or ethanol production facility under this chapter.
- b. ~~The~~ Except as provided in subdivision c, the maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.
- c. If a livestock operation has reached the limit provided for in subdivision b as a result of any activity other than the purchase or installation of a biodigester, that operation is entitled to receive from the fund up to two hundred fifty thousand dollars as an additional interest rate buydown on the operation's purchase or installation of a biodigester system.

3. The fund participation is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
4. The Bank of North Dakota shall adopt rules to implement this chapter.

Approved April 21, 2009

Filed April 22, 2009

## CHAPTER 188

### SENATE BILL NO. 2245

(Senators Pomeroy, Anderson, Erbele, Warner)  
(Representatives Mueller, Myxter)

AN ACT to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North Dakota Century Code, relating to the development of wind power.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 17-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**17-04-01. Wind option agreement - Definition - Termination.** A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms. A wind option agreement is void and terminates if development to produce energy from wind power has not occurred on the property that is the subject of the agreement within five years after the wind option agreement commences the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

**SECTION 2. AMENDMENT.** Section 17-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**17-04-03. Wind easements - Creation - Term - Development required.** A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. However, the easement is void if no development to produce energy from wind power associated with the easement has occurred within five years after the easement is created the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

**SECTION 3. AMENDMENT.** Section 17-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**17-04-05. Wind energy leases - Termination.** A lease for wind energy purposes is void and terminates if development to produce energy from wind power

has not occurred on the leasehold within five years after the lease commences the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 189

### HOUSE BILL NO. 1509

(Representatives Nelson, DeKrey, Mueller)  
(Senators Andrist, Klein, Triplett)

AN ACT to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to requirements for wind easement and wind energy leases; and to provide for a legislative council study of wind easement and wind energy leases.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 17-04 of the North Dakota Century Code is created and enacted as follows:

##### **Requirements for wind easements and wind energy leases.**

1. In a wind easement and a wind energy lease, the easement and lease:
  - a. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

Special message to property owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to \_\_\_\_\_ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.
  - b. May not be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.
  - c. May not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.
  - d. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement. When a wind energy facility is being constructed and when it is completed, the property owner must make accommodations to the developer, owner, or operator of the facility for the facility's business operations to allow the construction and operation of the wind energy facility.

- e. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind energy generation.
  - f. May not make the property owner liable for any damages caused by the wind energy facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.
  - g. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.
  - h. Must allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years unless the property owner receives the normal minimum lease payments that would have occurred if the wind energy facility had been operating during that time. For the purposes of this subdivision, the term "normal minimum lease payments" means a payment in the lease or easement called a "base amount" or "minimum payment", or similar language, or if this language is not provided for in the lease or easement, payments at least equal to the periodic payments received by the property owner in the last calendar year that the wind energy facility was in full operation.
  - i. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.
2. The owner of the wind energy facility shall carry general liability insurance relating to claims for property damage or bodily injury arising out of the construction or operation of the wind energy facility project site and may include the property owner as an additional insured on the policy.
3. If the terms of the wind easement or wind energy lease are not in accordance with this section, the court may reform the easement or lease in accordance with this section, void the easement or lease, or order any relief allowed by law.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - WIND EASEMENTS AND WIND ENERGY LEASES.** During the 2009-2010 interim, the legislative council shall consider studying wind easements and wind energy leases. The study must include consideration of confidentiality clauses, the liability of each party for damages and taxes, instrument provisions relating to insurance and the need for insurance, and the concerns of property owners and wind developers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 4, 2009  
Filed May 5, 2009

## CHAPTER 190

### SENATE BILL NO. 2376 (Senators Wardner, Freborg, Triplett) (Representatives S. Kelsh, Klein, Porter)

AN ACT to amend and reenact section 17-05-08 of the North Dakota Century Code, relating to replenishing a reserve fund for a portion of bonds issued by the transmission authority.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 17-05-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **17-05-08. Evidences of indebtedness.**

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
  - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
  - b. Amounts received by the authority under loans authorized under this chapter.
  - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.

4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
  - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.
  - b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
  - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
  - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
6. The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed two hundred forty million dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the two hundred forty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.
7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by

which a pledge is created need be filed or recorded, except in the records of the authority.

- ~~7-~~ 8. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.
- ~~8-~~ 9. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
- ~~9-~~ 10. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
- a. Pay the expenses of operating and maintaining the transmission facilities;
  - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
  - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 191****SENATE BILL NO. 2350**

(Senators Wanzek, Miller, Triplett)

(Representatives Brandenburg, Mueller, Vigesaa)

AN ACT to provide for the creation of an ethanol council; to amend and reenact sections 4-24-09 and 4-24-10 of the North Dakota Century Code, relating to the agricultural commodity assessments funds and a report to the legislative assembly; to provide a penalty; and to provide a continuing appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Definitions.** As used in sections 1 through 13 of this Act:

1. "Council" means the North Dakota ethanol council.
2. "Producer" means the owner of a facility that is located in this state and which produces annually more than one million gallons of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines.

**SECTION 2. Council - Membership - Election - Term.**

1. The council consists of one individual appointed by each producer.
2. Each member of the council must be a resident of this state and employed by a producer.
3. The term of each member is four years and begins on April first following the members' appointment. The terms must be staggered by the council to ensure that an approximately equal number of appointments expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided by this section, the member's office is deemed vacant and the producer who appointed that member shall appoint another qualified individual for the remainder of the term.
5. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

**SECTION 3. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**SECTION 4. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council, but not exceeding one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**SECTION 5. Council - Powers.**

1. The council may:
  - a. Expend moneys collected pursuant to sections 1 through 13 of this Act for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services to carry out sections 1 through 13 of this Act;
  - d. Contract with any person for any purpose permitted under sections 1 through 13 of this Act;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer sections 1 through 13 of this Act.
2. The council may not engage in a commercial business enterprise.

**SECTION 6. Council - Duties.**

1. The council shall determine the uses to which any moneys raised under sections 1 through 13 of this Act may be expended. The uses may include:
  - a. The funding of research, education programs, promotion, and market development efforts; and
  - b. The support of state, regional, national, and international entities that promote ethanol utilization.
2. The council shall develop and disseminate information regarding the purpose of the ethanol assessment and ways in which the assessment benefits producers.

**SECTION 7. Assessment.** An assessment at the rate of three one-hundredths of one cent per gallon is imposed upon all ethanol produced and sold in this state.

**SECTION 8. Calculation of assessment - Records.**

1. Each producer shall calculate the assessment imposed by section 7 of this Act at the time of sale.
2. Each producer shall keep documents regarding its ethanol production and sales for a period of three years. The producer shall make these records available to the council for examination upon request.

3. No later than thirty days after the conclusion of each calendar quarter, each producer shall file with the council a report stating the quantity of ethanol produced and the quantity sold during the preceding quarter.

**SECTION 9. Submission of assessments - Civil penalty.**

1. Each producer shall forward to the council all assessments imposed by section 7 of this Act within thirty days after the conclusion of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of twelve percent per annum from the due date.

**SECTION 10. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with sections 1 through 13 of this Act, a producer shall submit to the council a written request for a refund application within sixty days after the conclusion of each calendar quarter.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the conclusion of each calendar quarter. The council shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.

**SECTION 11. Expenditure of funds.** The council shall approve all expenditures made pursuant to sections 1 through 13 of this Act. The expenditures must be recorded as directed by the office of management and budget.

**SECTION 12. Continuing appropriation.** The council shall forward all moneys received under sections 1 through 13 of this Act to the state treasurer for deposit in the ethanol fund. All moneys in the ethanol fund are appropriated on a continuing basis to the council to carry out sections 1 through 13 of this Act.

**SECTION 13. Penalty.** Any person willfully violating sections 1 through 13 of this Act is guilty of a class B misdemeanor.

**SECTION 14. AMENDMENT.** Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-09. Agricultural commodity assessments funds - Investment income allocation.** The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity

organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

**SECTION 15. AMENDMENT.** Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 192

### HOUSE BILL NO. 1322

(Representatives Porter, Brandenburg, S. Kelsh)  
(Senators Flakoll, Triplett, Wardner)

AN ACT to create and enact a new chapter to title 17 of the North Dakota Century Code, relating to an energy policy commission; to provide for a water resources study; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new chapter to title 17 of the North Dakota Century Code is created and enacted as follows:

#### **Energy policy commission.**

1. The energy policy commission is composed of:
  - a. The commissioner of commerce;
  - b. A representative of the agriculture community appointed by the governor;
  - c. A representative recommended by the lignite energy council appointed by the governor;
  - d. A representative recommended by the North Dakota petroleum council appointed by the governor;
  - e. A member from the biodiesel industry appointed by the governor;
  - f. A member from the biomass industry appointed by the governor;
  - g. A member from the wind industry appointed by the governor;
  - h. A member from the ethanol industry appointed by the governor;
  - i. A representative recommended by the North Dakota petroleum marketers association appointed by the governor;
  - j. A member from the North Dakota investor-owned electric utility industry appointed by the governor;
  - k. A member from the generation and transmission electric cooperative industry appointed by the governor;
  - l. A member from the lignite coal-producing industry appointed by the governor;
  - m. A member from the refining or gas-processing industry appointed by the governor; and

- n. Additional nonvoting members appointed by the governor.
2. Each member of the commission shall serve for a term of two years, beginning July first, may be reappointed for additional terms, and serves at the pleasure of the governor.
  3. The commissioner of commerce is chairman of the commission.
  4. The commission shall meet at least four times per biennium or as often as the chairman deems necessary. The commission shall hold at least two public hearings per biennium, at which time interested parties may present testimony regarding issues pertinent to the development of the policy. The department of commerce shall provide staffing for the commission.
  5. The commission shall develop a comprehensive energy policy for the state. The commission shall monitor progress made toward the goals outlined in the energy policy and make changes to the energy policy as needed. The commission shall report biennially to the legislative council.
  6. The members of the commission who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in this subsection, the expenses of appointed members are to be paid by the department of commerce. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

## **SECTION 2. WATER RESOURCES STUDY - REPORT TO LEGISLATIVE COUNCIL.**

1. During the 2009-10 interim, the state water commission shall conduct a study to:
  - a. Determine unit water use for each sector of energy production, including:
    - (1) Petroleum;
    - (2) Ethanol;
    - (3) Electrical generation; and
    - (4) Biodiesel;
  - b. Identify water quality constraints for each energy sector;
  - c. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission; and
  - d. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water energy development.

2. The state water commission shall cooperate with the energy policy commission in conducting this study.
3. The water commission shall report its findings and recommendations to the legislative council before September 1, 2010.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - LIVESTOCK FEEDING FACILITY PERMITTING PROCESS.** The legislative council shall consider studying, during the 2009-10 interim, issues related to the development of livestock feeding facilities and the use of byproducts from biofuels production as a feedstock. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 193

### SENATE BILL NO. 2228

(Senators Stenehjem, O'Connell)  
(Representatives Boucher, Carlson)  
(At the request of the Governor)

AN ACT to create and enact a new chapter to title 17 of the North Dakota Century Code, relating to the creation of a biofuel blender pump incentive fund; to amend and reenact sections 19-10-19, 19-10-20, and 19-10-21 of the North Dakota Century Code, relating to petroleum products; to provide an effective date; to provide an expiration date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new chapter to title 17 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Biodiesel" means any non-petroleum-based diesel fuel made from a renewable resource such as vegetable oil or animal fat.
2. "E85 fuel" means a petroleum product that:
  - a. Is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline;
  - b. Typically contains eighty-five percent ethanol by volume but must at a minimum contain sixty percent ethanol by volume; and
  - c. Complies with the American society for testing materials specification D 5798-96.
3. "Motor fuel retailer" means a person that acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
4. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.

#### **Biofuel blender pump incentive fund - Administration.**

1. The department of commerce shall administer the biofuel blender pump incentive fund and use moneys in the fund to provide cost-share grants of up to five thousand dollars per pump to motor fuel retailers for the installation of biofuel blender pumps and associated equipment at retail locations.
2. In determining eligibility for grant funds, the department shall establish by rule criteria governing:

- a. The verification of costs for biofuel blender pumps and associated equipment;
  - b. The eligibility of grant recipients;
  - c. The application and grant award procedure; and
  - d. Reporting and accountability procedures for grant recipients.
3. The amount of incentives payable to any retail location under this chapter may not exceed two percent of the total amount appropriated or transferred to the biofuel blender pump incentive fund.

#### **Blender pumps - Requirements.**

1. To qualify for a grant under this chapter, a retailer must install an ethanol blender pump and an associated storage and piping system. The pump must be the type that:
  - a. Dispenses at retail a blend of gasoline and ethanol in the ratio selected by the purchaser;
  - b. Is manufactured to an industry standard and carries a warranty for compatibility with dispenser components and storage and piping systems;
  - c. Has at least four hoses and dispenses the following:
    - (1) Either a blend of ten percent ethanol or the minimum blend percentage approved for all vehicles by the United States environmental protection agency;
    - (2) A blend of at least twenty percent ethanol; and
    - (3) E85 fuel; and
  - d. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.
2. In order to qualify for a grant under this chapter, a retailer must install a biodiesel blender pump that:
  - a. Dispenses at retail varying blends of biodiesel and mineral diesel in the ratio selected by the purchaser; and
  - b. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.

**Biofuel blender pump incentive fund - Administrative costs.** The department may use up to five percent of any amount appropriated to the biofuel blender pump incentive fund for administration, the dissemination of information regarding the biofuel blender pump incentive program, and the dissemination of information regarding the benefits of biofuels.

**SECTION 2. AMENDMENT.** Section 19-10-19 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-19. Inspection fees.** Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, ~~or diesel fuel, or alternative fuel~~ sold or used during a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

**SECTION 3. AMENDMENT.** Section 19-10-20 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-20. Report to tax commissioner of petroleum products - Contents - Fuels.** No later than the twenty-fifth day of each calendar month, every person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, ~~or diesel fuel, or alternative fuel~~ during the preceding month. The report must include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes. Failure to send the report and inspection fee required by the preceding section to the tax commissioner constitutes a violation of the provisions of this chapter.

**SECTION 4. AMENDMENT.** Section 19-10-21 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-21. Bond may be required of Fuel dealer in petroleum products - Bond.** The tax commissioner may require any person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond payable to the state of North Dakota in the sum of five hundred dollars, or twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, ~~and diesel fuel, and alternative fuel~~ and the payment of all inspection fees provided for in this chapter. The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

**SECTION 5. BIOFUEL BLENDER PUMP INCENTIVE FUND - TRANSFER.** The state treasurer shall transfer any moneys in the biofuel blender pump incentive fund on November 30, 2010, to the general fund.

**SECTION 6. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

**SECTION 7. EXPIRATION DATE.** This Act is effective through November 30, 2010, and after that date is ineffective.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009

Filed April 23, 2009

# FIRES

## CHAPTER 194

### SENATE BILL NO. 2204

(Senators Klein, Freborg, Nelson)

(Representatives Brandenburg, Hofstad, Wrangham)

AN ACT to amend and reenact sections 18-05-01, 18-05-04, 18-05-05, 18-05-06, 18-05-07, 18-05-09, 18-05-10, 18-05-12, and 18-05-13 of the North Dakota Century Code, relating to rural fire department firefighters relief associations.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-01. Firefighters relief association - Where it may be organized.** A firefighters relief association may be organized in any city, rural fire department, or rural fire protection district that has a fire department. In organizing a firefighters relief association, the procedure provided in chapter 10-33 must be followed.

**SECTION 2. AMENDMENT.** Section 18-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-04. Apportioning insurance tax received by city, rural fire department, or rural fire protection district.** The city auditor in a city or the treasurer of a rural fire department or rural fire protection district with a fire department and a firefighters relief association shall apportion the amount received under section 18-04-05, so one-half of the amount is placed in a fund to be disbursed by the city's, rural fire department's, or rural fire protection district's governing body in maintaining the fire department and one-half is paid to the treasurer of the firefighters relief association. Except, the city's governing body may direct the city auditor or the rural fire department or rural fire protection district's board of directors may direct the treasurer to pay all or any portion of the one-half of the amount received which would otherwise be disbursed in maintaining the fire department to the treasurer of the firefighters relief association if its financial condition makes the disposition necessary or advisable.

**SECTION 3. AMENDMENT.** Section 18-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-05. Disbursement of money received by treasurer of firefighters relief association.** The amount received by the treasurer of a firefighters relief association from the state may be disbursed for the following purposes only:

1. For the maintenance of the association.
2. For pensions to and the relief of sick, injured, and disabled members of any fire department in the municipality, rural fire department, or the rural fire protection district and the members' surviving spouses and children.

3. For the payment of service pensions as provided in section 18-05-06 in the amounts and manner the association designates in its articles of incorporation and bylaws.

**SECTION 4. AMENDMENT.** Section 18-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-06. Service pension - Who may receive - Recipient entitled to no further relief from association.**

1. A firefighters relief association organized under the laws of this state must be an internal revenue service approved plan.
2. A firefighters relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or any other source a service pension in an amount as may be provided by the association's bylaws to each of its members who has retired and who:
  - a. Has reached the age of fifty years; and
  - b. ~~Has done active duty for twenty years or more as a member of a fire department in the municipality or rural fire protection district in which the association exists;~~
  - c. ~~Has been a member of the firefighters relief association for at least ten years before the date of retirement; and~~
  - d. ~~Complies with any additional conditions as to age, service, and membership that may be prescribed by the bylaws of the association.~~ Meets all the requirements of the firefighters relief association bylaws.
- ~~3.~~ 3. A pension may not be paid to any individual while that individual remains a member of the fire department, rural fire department, or rural fire protection district department, and an individual who is receiving a service pension is entitled to no other relief from the association. ~~An individual who becomes a member of a firefighters relief association at the time of the formation of the association and who meets all of the requirements of subsection 1, except subdivision c relating to vesting, may receive a retirement benefit under this section if the benefit is actuarially reduced to account for the decreased period of contribution to the fund.~~

**SECTION 5. AMENDMENT.** Section 18-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-07. Eligibility for service pension may be acquired by paying back assessments.** A firefighter who, for the number of years required for retirement, actually has served in a fire department in a municipality, rural fire department, or rural fire protection district in which a firefighters relief association has been organized and who pays into the firefighters relief and pension fund maintained in the municipality, rural fire department, or rural fire protection district assessments equal to the amounts assessed against the members of the association during the time of the firefighter's service in the department, with interest upon the assessments, must be allowed membership in the association and is entitled to receive, upon

retirement, the same pension from the fund as is paid to other firefighters. The bylaws of an association may not contain any provision that discriminates against a firefighter who actually has worked as a firefighter during the number of years required by the bylaws or which prevents the firefighter from, or discriminates against the firefighter in, participating in the association or in the benefits from the fund. The rights provided for in this chapter are acquired by compliance with this section whether compliance was accomplished before or after July 1, 1935, without regard to the time when the required service was performed.

**SECTION 6. AMENDMENT.** Section 18-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-09. Who deemed firefighter.** A substitute firefighter, a person serving on probation, and a firefighter in a municipality, rural fire department, or rural fire protection district having a relief association in its fire department who is not a member of the association may not be deemed a firefighter within the meaning of this chapter.

**SECTION 7. AMENDMENT.** Section 18-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-10. Qualifications as to age and term of service inapplicable to pension for disability.** The qualifications as to age and term of service prescribed by this chapter do not apply to a member of a fire department who makes an application for a pension on account of injuries or disabilities that result in the firefighter being unfit to perform the duties of an active firefighter. The relief association shall pay the pension to those members, or to the surviving spouse or children of a deceased firefighter, in the amounts and under the limitations and conditions as its articles of incorporation and bylaws provide and permit. A pension paid to any one family, however, may not exceed the maximum monthly service pension permitted under this chapter.

**SECTION 8. AMENDMENT.** Section 18-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-12. Secretary and treasurer of firefighters relief association to prepare report - Contents - Filing.** The secretary and treasurer of every firefighters relief association shall prepare annually a report of all the receipts and expenditures of the association for the previous year showing the source of all receipts and for what purpose and to whom any money was paid and expended. The report must be filed in the office of the city auditor of the municipality wherein the association is situated or in the case of a rural fire department or rural fire protection district, the office of the county auditor of the county in which the rural fire department or rural fire protection district is located, and a duplicate of the report must be filed with the office of management and budget before any money may be paid to the relief association.

**SECTION 9. AMENDMENT.** Section 18-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**18-05-13. Audit of books of relief association - Report of unauthorized spending to governor - Duty of governor.** The books and accounts of the secretary and treasurer of each firefighters relief association receiving funds under the provisions of this chapter must be audited as required by section 54-10-14. If the money, or any part of it, has been or is being expended for unauthorized purposes, the facts must be reported to the governor. Thereupon, the governor shall direct the office of management and budget not to prepare any warrants for the benefits of the

fire department or relief association of the municipality, rural fire department, or rural fire protection district in which the association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 195

### HOUSE BILL NO. 1070

(Representatives Grande, Ekstrom, Boehning)  
(Senators Grindberg, Flakoll, Fischer)

AN ACT to create and enact a new section to chapter 18-11 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 18-11 of the North Dakota Century Code is created and enacted as follows:

##### **Service, disability, and survivor pensions - Formulation of optional plan.**

With the consent of the governing body of the city involved, and in substitution for a pension payment schedule, disability pension provision, and survivor pension provision provided in sections 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a monthly service pension plan, disability pension for members, and pensions for survivors of deceased members of the association as provided in this section.

1. Normal retirement date. Normal retirement date for a service pension is the first day of the month coincident with or next following the member's attainment of age fifty-five and the completion of ten years of service.
2. Service pensions. A member retiring on or after the member's retirement date is entitled to receive a monthly benefit beginning following the member's actual retirement and continuing for the member's lifetime as specified in subsection 7. The benefit amount is equal to two and fifty hundredths percent of average final compensation, times years of service, up to a maximum of seventy-five percent.
3. Termination benefits. If a member terminates the member's employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member is entitled to the following:
  - a. Nonvested termination. If the member has less than ten years of credited service upon termination, the member is entitled to a refund of the member's accumulated contributions, payable in a single lump sum payment. Any benefits already received by the member from the association must be deducted from this payment. Upon return of the member's accumulated contributions, all of the member's rights and benefits under the plan are forfeited and terminated. Upon any reemployment, a firefighter may not receive credit for years or completed months of service for which the firefighter has withdrawn the firefighter's accumulated contributions from the plan, unless the firefighter repays into the plan the contributions the firefighter has withdrawn, with interest, as determined by the board, within ninety days after the firefighter's reemployment. A member may voluntarily leave the member's accumulated contributions in the plan for a period of five years after leaving the employ of the department pending the possibility of

being reemployed as a firefighter, without losing credit for the time that the member was a member of the plan. If a member who is not vested is not reemployed as a firefighter with the department within five years, the member's accumulated contributions must be returned. During this period, the member is not entitled to any benefits under subsection 4 or 5.

- b. Vested termination. If the member has ten or more years of service upon termination, the member is entitled to a monthly retirement benefit, determined in the same manner as a service pension, and based upon the member's service and the applicable pay in effect at the time of termination. The monthly benefit amount commences upon application by the member, at the member's age fifty-five. Alternatively, upon the member's request, the member's accumulated contributions must be returned to the member. Following payment under such election, neither the member nor the member's beneficiaries or estate is entitled to any future benefit payments from the fund.

4. Disability pensions.

- a. Eligibility. An active member who becomes disabled, and is not yet eligible to begin payments under a service pension, is eligible to receive a disability pension. A service or deferred pensioner who becomes disabled, which disability arose from or is attributable to service on the fire department, and who has ceased to be an active member of the association for five years or less is eligible to receive a disability pension.

- b. The disability benefit is determined as follows:

(1) Benefit amount. The monthly benefit under the disability pension equals a percentage of the monthly salary of a top paid firefighter for the year that the first benefit is paid, reduced as described below. The percentage equals ten percent times the member's years of credited service, up to a maximum of fifty percent. If the member is eligible for a service pension, the member's monthly benefit equals the greater of the disability pension or the service pension. If the member is eligible for a deferred pension, the member will receive the disability pension through the member's normal retirement age, and then is entitled to receive the greater of the disability pension or the member's service pension amount.

(2) Adjusted for other income. The disability pension amount must be reduced by one dollar for every "excess dollar". "Excess dollar" is the sum of earned income plus payments by the association, plus other insurance payments, less the salary of a top paid firefighter on January thirty-first of the year that the excess dollar amount is determined. This reduction must be redetermined each year. For purposes of this provision, earned income is all income reported or reportable for federal income tax purposes, excluding passive income, but including wages, salary, commissions, and similar pay from any gainful work, including partnership



- (1) Life annuity. A monthly benefit payable for the member's lifetime only, with no survivor benefits payable.
  - (2) Certain and life annuity. A monthly benefit payable for the member's lifetime, but with one hundred twenty payments guaranteed. If the member dies before receiving one hundred twenty payments, monthly payments will be made to the member's designated beneficiary or estate until one hundred twenty payments have been paid.
  - (3) Joint and survivor annuity. A monthly benefit payable for the member's life, plus payments equal to seventy-five percent or one hundred percent of this benefit amount to the member's spouse following the member's death. Under this option, the surviving spouse is the member's spouse at the time of retirement. If the spouse dies before the member, no benefits will be paid to a survivor following the member's death.
- c. Benefit selection. A member may select one of the optional forms of payment in subdivision b during the ninety days prior to the member's actual retirement, or upon attaining normal retirement age, on a form provided by the board. The selection may be changed at any time before cashing or depositing the first retirement payment. Consent of the member's spouse is not required to select or change an optional benefit form. A member may change the beneficiary designated under the certain and life payment form at any time prior to the member's death by filing a new selection form with the board. The beneficiary's consent is not required. If a member dies after having completed and filed a selection form with the board, but before actually retiring, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the optional payment indicated in the member's form. If a member dies after reaching normal retirement age without having completed a selection form, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the joint and one hundred percent survivor optional payment form if the member was married on the member's date of death, or the certain and life form if the member was not married. If the member's spouse dies after the member has filed forms with the board selecting a joint and survivor benefit form, but before cashing or depositing the first retirement payment, and if the member does not file a revised selection form, the board shall direct that payments be made under subdivision a, providing for payments to a member who is not married at retirement.
6. Preretirement death benefits.
- a. Surviving spouse benefits. If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent of the amount of the disability pension, or if greater, fifty percent of the deferred vested pension, the member would have been entitled to on the date of death must be paid to the surviving spouse for the period of the spouse's natural life.

- b. Children's benefit. If a vested active or vested deferred member dies before retirement, a monthly benefit must be paid to the member's surviving children until age eighteen, or until completion of high school, if the children are actively enrolled beyond age eighteen. The benefit amount to be shared among the children is equal to a percentage of the top paid firefighter's monthly salary on January thirty-first of the year the benefit is paid. The percentage is determined based on the number of children at the time of each benefit payment and whether the children's parent is alive. If the children's surviving parent is alive, the percentage is twenty percent. If no parent survives, and there is more than one child, the percentage is sixty percent. If there is no parent and only one child, the percentage is forty percent. Children who were living while the deceased was on the payroll of the department, or who were born within nine months after the decedent was withdrawn from the payroll of the department, are eligible for this benefit.
- c. Minimum benefit. When an active member who is not yet vested dies, the member's beneficiaries designated on forms provided by the pension association or the member's estate, in case this form has not been filed with the association, or in case the designated beneficiaries do not exist or cannot be found within six months of the date of death, shall receive in addition to the funeral benefit, a sum equal to what the member has contributed to the association, less the amount of any benefits received by the active member or the member's beneficiaries or estate.

7. Commencement of benefits.

- a. Payment of benefits. Monthly benefit payments must be distributed on the last day of each month. For service or deferred pensions, the first payment must be prorated to equal the total monthly benefit earned, times the number of days in the month following actual retirement, divided by the total number of days in the month. Benefits payable to the surviving beneficiary of a retired member who had been receiving payments commence in the month following the retired member's death. Benefits payable to the surviving spouse or children of a member who dies before retirement must be similarly prorated based on the date of death of the active or deferred member. The final monthly benefit paid in the month a retired member dies, a surviving beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits must be paid on the last day of the month of death or termination of eligibility and must equal a full monthly payment with no reduction or proration.
- b. Mandatory commencement of benefits. Notwithstanding any provision in this section to the contrary, benefits payable under the plan are subject to the following:
  - (1) A member's benefits may not commence later than April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half and the calendar year in which the member terminates employment. If a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.

- (2) The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.
  - (3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.
  - (4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rules do not apply to any portion of the member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.
  - (5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.
8. Actuarial equivalence - Optional forms of benefit. To determine the amount of the monthly payment under the life-only and certain and life optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors:

Life-only benefit: 1.043

Certain and life benefit: 1.030

To determine the amount of the monthly payment under the alternative joint and survivor optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors based on the difference in age between the member and the member's spouse, using the member's and spouse's ages as of the member's and spouse's most recent birthdays.

If the member is the same age as the spouse, use the following factors:

Joint and seventy-five percent survivor: 0.980

Joint and one hundred percent survivor: 0.960

If the spouse is not the same age as the member, use the following factors:

<u>If the Spouse Is Younger:</u> <u>Age Difference</u>	<u>Joint and Survivor</u> <u>75%</u>	<u>Joint and Survivor</u> <u>100%</u>	<u>If the Spouse Is Older:</u> <u>Age Difference</u>	<u>Joint and Survivor</u> <u>75%</u>	<u>Joint and Survivor</u> <u>100%</u>
<u>1</u>	<u>0.979</u>	<u>0.959</u>	<u>1</u>	<u>0.980</u>	<u>0.960</u>
<u>2</u>	<u>0.978</u>	<u>0.957</u>	<u>2</u>	<u>0.981</u>	<u>0.962</u>
<u>3</u>	<u>0.977</u>	<u>0.956</u>	<u>3</u>	<u>0.981</u>	<u>0.964</u>
<u>4</u>	<u>0.976</u>	<u>0.954</u>	<u>4</u>	<u>0.982</u>	<u>0.965</u>
<u>5</u>	<u>0.976</u>	<u>0.952</u>	<u>5</u>	<u>0.983</u>	<u>0.967</u>
<u>6</u>	<u>0.975</u>	<u>0.951</u>	<u>6</u>	<u>0.984</u>	<u>0.969</u>
<u>7</u>	<u>0.974</u>	<u>0.949</u>	<u>7</u>	<u>0.985</u>	<u>0.970</u>
<u>8</u>	<u>0.973</u>	<u>0.948</u>	<u>8</u>	<u>0.986</u>	<u>0.972</u>
<u>9</u>	<u>0.973</u>	<u>0.947</u>	<u>9</u>	<u>0.986</u>	<u>0.973</u>
<u>10</u>	<u>0.972</u>	<u>0.945</u>	<u>10</u>	<u>0.987</u>	<u>0.975</u>
<u>11</u>	<u>0.971</u>	<u>0.944</u>	<u>11</u>	<u>0.988</u>	<u>0.976</u>
<u>12</u>	<u>0.971</u>	<u>0.943</u>	<u>12</u>	<u>0.989</u>	<u>0.978</u>
<u>13</u>	<u>0.970</u>	<u>0.942</u>	<u>13</u>	<u>0.989</u>	<u>0.979</u>
<u>14</u>	<u>0.969</u>	<u>0.940</u>	<u>14</u>	<u>0.990</u>	<u>0.980</u>
<u>15</u>	<u>0.969</u>	<u>0.939</u>	<u>15</u>	<u>0.991</u>	<u>0.982</u>

Approved April 9, 2009

Filed April 13, 2009

## CHAPTER 196

### HOUSE BILL NO. 1368

(Representatives Kroeber, Glassheim, Hofstad, Nelson)  
(Senators Lyson, Robinson)

AN ACT to create and enact chapter 18-13 of the North Dakota Century Code, relating to reduced ignition propensity standards for cigarettes; to provide a penalty; to provide an appropriation; to provide an effective date; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 18-13 of the North Dakota Century Code is created and enacted as follows:

**18-13-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Agent" means any person authorized by the attorney general to purchase or sell packages of cigarettes.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco and encased in any material except tobacco.
3. "Manufacturer" means:
  - a. Any person that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced which the person intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;
  - b. The first purchaser that intends to resell in the United States cigarettes manufactured that the original manufacturer or maker does not intend to be sold in the United States; or
  - c. Any person that becomes a successor of a person described in subdivision a or b.
4. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing and to ensure that the testing repeatability remains within the required repeatability values stated in subdivision f of subsection 1 of section 18-13-02 for all test trials used to certify cigarettes in accordance with this chapter.
5. "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.
6. "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

7. "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement to do the same. The term includes the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money.
8. "Sell" means to sell or to offer or agree to sell.
9. "Wholesale dealer" means any person that sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person that owns, operates, or maintains a cigarette or tobacco product vending machine in, at, or upon premises owned or occupied by any other person.

#### **18-13-02. Test method and performance standard - Penalty.**

1. Except as provided in subsection 7, a cigarette may not be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarette has been tested in accordance with the test method and meets the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with section 18-13-03, and the cigarette has been marked in accordance with section 18-13-04.
  - a. Testing of cigarettes must be conducted in accordance with the American society of testing and materials standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".
  - b. Testing must be conducted on ten layers of filter paper.
  - c. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests must comprise a complete test trial for each cigarette tested.
  - d. The performance standard required by this section must be applied only to a complete test trial.
  - e. Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization, or other comparable accreditation standard required by the state fire marshal.
  - f. A laboratory conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value may not be greater than nineteen hundredths.
  - g. This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

- h. Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required must be conducted in accordance with this section.
2. Each cigarette listed in a certification submitted pursuant to section 18-13-03 which uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, at least two bands must be located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.
3. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subdivision a of subsection 1 shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision c of subsection 1, the manufacturer may employ the test method and performance standard to certify the cigarette pursuant to section 18-13-03. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section apply to the manufacturer.
4. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make those copies available.
5. The state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with

American society of testing and materials standard E2187-04 and the performance standard in subdivision c of subsection 1.

6. The state fire marshal shall review the effectiveness of this section and report each interim to the legislative council the state fire marshal's findings and any recommendation for legislation to improve the effectiveness of this chapter.
7. The requirements of subsection 1 may not prohibit:
  - a. Wholesale or retail dealers from selling their existing inventory of cigarettes after July 31, 2010, if the wholesale or retail dealers can establish that the inventory was purchased before August 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or
  - b. The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, "consumer testing" means an assessment of cigarettes which is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of those cigarettes, utilizing only the quantity of cigarettes which is reasonably necessary for the assessment.
8. This chapter must be interpreted and construed to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date this chapter is enacted.

### **18-13-03. Certification and product change.**

1. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with section 18-13-02 and each cigarette listed in the certification meets the performance standard set forth in subdivision c of subsection 1 of section 18-13-02.
2. Each cigarette listed in the certification must be described with the following information:
  - a. Brand or trade name on the package;
  - b. Style, such as light or ultra light;
  - c. Length in millimeters;
  - d. Circumference in millimeters;
  - e. Flavor, such as menthol or chocolate, if applicable;
  - f. Filter or nonfilter;
  - g. Package description, such as soft pack or box;
  - h. Marking approved in accordance with section 18-13-04;

- i. The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
  - j. The date that the testing occurred.
3. The certifications must be made available to the attorney general for purposes consistent with this chapter and the state tax commissioner for the purposes of ensuring compliance with this section.
4. Each cigarette certified under this section must be recertified every three years.
5. For each cigarette listed in the certification or recertification, a manufacturer shall pay to the state fire marshal an initial fee of two hundred fifty dollars. The state fire marshal may adjust this fee annually to ensure the fee defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.
6. There is established in the state treasury a special fund to be known as the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund. The fund must consist of all certification fees submitted by manufacturers, and, in addition to any other moneys made available, be available pursuant to legislative appropriation, to the state fire marshal solely to support processing, testing, enforcement, and oversight activities under this chapter.
7. If a manufacturer has certified a cigarette under this section and makes any change to the cigarette which is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 18-13-02 and maintains records of that retesting as required by section 18-13-02. Any altered cigarette that does not meet the performance standards set forth in section 18-13-02 may not be sold in this state.

#### **18-13-04. Marking of cigarette packaging.**

1. Cigarettes that are certified by a manufacturer in accordance with section 18-13-03 must be marked to indicate compliance with the requirements of section 18-13-02. The marking must be in eight-point type or larger and consist of:
  - a. Modification of the product uniform product code to include a visible mark printed at or around the area of the uniform product code which may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the uniform product code;
  - b. Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or
  - c. Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

2. A manufacturer may use only one marking and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marked by that manufacturer.
3. The state fire marshal must be notified as to the marking that is selected.
4. Before the certification of any cigarette, a manufacturer shall present its proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes. Proposed markings are deemed approved if the state fire marshal fails to act within ten business days of receiving a request for approval.
5. A manufacturer may not modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.
6. A manufacturer certifying cigarettes in accordance with section 18-13-03 shall provide a copy of the certifications to every wholesale dealer and agent to which the manufacturer sells cigarettes, and shall provide sufficient copies of an illustration of the package marking utilized by the manufacturer under this section for each retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer and agent shall provide a copy of these package markings received from the manufacturer to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the tax commissioner, the attorney general, and their employees to inspect markings of cigarette packaging marked under this section.

#### **18-13-05. Penalties.**

1. A manufacturer, wholesale dealer, agent, or any other person that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 18-13-02, for a first offense is subject to a civil penalty not to exceed ten thousand dollars for each sale of cigarettes, and for a subsequent offense is subject to a civil penalty not to exceed twenty-five thousand dollars for each sale, but the penalty against any person may not exceed one hundred thousand dollars during any thirty-day period.
2. A retail dealer that knowingly sells cigarettes in violation of section 18-13-02:
  - a. For a first offense is subject to a civil penalty not to exceed five hundred dollars, and for a subsequent offense is subject to a civil penalty not to exceed two thousand dollars, for each sale or offer for sale of cigarettes if the total number of cigarettes sold or offered for sale in the sale does not exceed one thousand cigarettes; or
  - b. For a first offense is subject to a civil penalty not to exceed one thousand dollars, and for a subsequent offense is subject to a civil penalty not to exceed five thousand dollars for each sale or offer

for sale of such cigarettes if the total number of cigarettes sold or offered for sale in the sale exceeds one thousand cigarettes, provided that this penalty may not exceed twenty-five thousand dollars during a thirty-day period.

3. In addition to any penalty prescribed by law, any manufacturer that knowingly makes a false certification pursuant to section 18-13-03 is subject to a civil penalty of at least seventy-five thousand dollars, but not to exceed two hundred fifty thousand dollars for each false certification.
4. Any person violating any other provision in this chapter is subject to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense to a civil penalty not to exceed five thousand dollars for each violation.
5. If any law enforcement personnel or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by section 18-13-03, or which have not been marked as required by section 18-13-04, that personnel or representative may seize and take possession of the cigarettes. Cigarettes seized under this subsection must be destroyed; provided, however, that before the destruction of the cigarettes, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette.
6. In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district court for a violation of this chapter, including petitioning for:
  - a. Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person to enjoin the person from selling or offering to sell any cigarette that does not comply with the requirements of this chapter; or
  - b. To recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees.
7. Each violation of this chapter or of rules adopted to implement this chapter constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

#### **18-13-06. Implementation.**

1. The state fire marshal may adopt rules to implement this chapter.
2. The state tax commissioner in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under chapter 57-36, may inspect such cigarettes to determine if the cigarettes are marked as required by section 18-13-04. If the cigarettes are not marked as required, the state tax commissioner shall notify the state fire marshal.

**18-13-07. Inspection.** The attorney general and the state fire marshal may examine the books, papers, invoices, and other records of any person in possession,

control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, shall give the attorney general and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

**18-13-08. Fire prevention and public safety fund.** There is established in the state treasury a special fund to be known as the fire prevention and public safety fund. The fund consists of all moneys recovered as penalties under section 18-13-05. The moneys must be deposited to the credit of the fund and must be made available to the state fire marshal to support fire safety and prevention programs upon legislative appropriation.

**18-13-09. Sale outside of North Dakota.** This chapter does not prohibit any person from manufacturing or selling cigarettes that do not meet the requirements of section 18-13-02 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.

**18-13-10. Local regulation.** Notwithstanding any other provision of law, home rule charter, or ordinance made under a home rule charter, a political subdivision may not enact or enforce any ordinance or regulation conflicting with any provision of this chapter or with any policy of this state expressed by this chapter.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of processing, testing, enforcement, and oversight activities in this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the fire prevention and public safety fund, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the attorney general to be made available to the state fire marshal for the purpose of supporting fire safety and prevention programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** This Act becomes effective August 1, 2010, however, this Act becomes ineffective on the date the state fire marshal certifies to the legislative council that a federal reduced cigarette ignition propensity standard has been adopted and has become effective.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 197****HOUSE BILL NO. 1124**

(Natural Resources Committee)

(At the request of the State Board of Higher Education and State Forester)

AN ACT to create and enact a new chapter to title 18 of the North Dakota Century Code, relating to approval of a compact with other states to promote effective prevention and control of forest fires.

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

**SECTION 1.** A new chapter to title 18 of the North Dakota Century Code is created and enacted as follows:

**Interstate compact for the prevention and control of wildland fires.** This compact for the prevention and control of wildland fires is entered into and enacted into law. The governor may execute a compact on behalf of the state with any one or more states who may by their legislative bodies, authorize a compact, in form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state and may consult with like officials of the other member states and may implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purpose of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

## ARTICLE V

If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact is liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering the outside aid.

All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. However, nothing in this compact prevents any assisting member state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall assure that workers compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

For the purposes of this compact the term, employee, includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

## ARTICLE VI

Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services, or facilities of any member state.

Nothing in this compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or

to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

#### ARTICLE VII

Representatives of the United States forest service may attend meetings of the compact administrators.

#### ARTICLE VIII

The provisions of Articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the legislature of the other state has given its assent to the mutual aid provisions of this compact.

#### ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Approved April 16, 2009  
Filed April 17, 2009

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 198

### SENATE BILL NO. 2218

(Senators J. Lee, Kilzer, Robinson)

(Representatives Glassheim, N. Johnson, R. Kelsch)

AN ACT to create and enact a new section to chapter 19-02.1 and section 19-03.1-22.4 of the North Dakota Century Code, relating to requirements for prescribing and dispensing controlled substances and certain other specified drugs and requirements for dispensing controlled substances by means of the internet; to amend and reenact subsection 2 of section 19-02.1-15 and section 19-03.1-23 of the North Dakota Century Code, relating to the exclusion from the exemption for dispensing certain drugs and penalties for unlawful distribution or dispensing of controlled substances and counterfeit controlled substances by means of the internet; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

#### **Requirements for dispensing controlled substances and specified drugs - Penalty.**

1. As used in this section:

- a. "Controlled substance" has the meaning set forth in section 19-03.1-01.
- b. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other practitioners, and must include one of the following actions:
  - (1) The prescribing practitioner examines the patient at the time the prescription or drug order is issued;
  - (2) The prescribing practitioner has performed a prior examination of the patient within twelve months;
  - (3) Another prescribing practitioner practicing within the same health system, group, or clinic as the prescribing practitioner has examined the patient within twelve months;



- c. To prohibit a physician from prescribing a controlled substance or specified drug through the use of a guideline or protocol established with an allied health professional, resident, or medical student under the direction and supervision of the physician;
  - d. To prohibit a practitioner from issuing a prescription or dispensing a controlled substance or specified drug in accordance with administrative rules adopted by a state agency authorizing expedited partner therapy in the management of a sexually transmitted disease; or
  - e. To limit prescription, administration, or dispensing of a controlled substance or specified drug through a distribution mechanism approved by the state health officer in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.
5. A person who violates this section is guilty of a class C felony.

**SECTION 2. AMENDMENT.** Subsection 2 of section 19-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug is exempt from the requirements of section 19-02.1-14, except subsection 1, subdivisions b and c of subsection 10, subsections 12 and 13, and the packaging requirements of subsections 8 and 9 of section 19-02.1-14, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption does not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or electronic means, or to a drug dispensed in violation of subsection 1.

**SECTION 3.** Section 19-03.1-22.4 of the North Dakota Century Code is created and enacted as follows:

**19-03.1-22.4. Controlled substances dispensed by means of the internet.**

1. As used in this section:
  - a. "Covering practitioner" means, with respect to a patient, a practitioner who conducts a medical evaluation, other than an in-person medical evaluation, at the request of a practitioner who:
    - (1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous twenty-four months; and
    - (2) Is temporarily unavailable to conduct the evaluation of the patient.

- b. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the internet.
- c. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.
- d. "Internet" and "practice of telemedicine" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].
- e. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a:
  - (1) Practitioner who has conducted at least one in-person medical evaluation of the patient; or
  - (2) Covering practitioner.
- 2. A controlled substance that is a prescription drug may not be delivered, distributed, or dispensed by means of the internet without a valid prescription, but nothing in this subsection may be construed to imply that one in-person medical evaluation by itself demonstrates that a prescription has been validly issued for a legitimate medical purpose within the usual course of professional practice.
- 3. This section applies to the delivery, distribution, and dispensing of a controlled substance by means of the internet from a location whether within or outside this state to a person or an address in this state.
- 4. Nothing in this section applies to the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine in accordance with applicable federal and state laws.
- 5. Nothing in this section may be construed as authorizing, prohibiting, or limiting the use of electronic prescriptions for controlled substances.

**SECTION 4. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

- a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least five years.
    - (2) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten years.
  - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
  - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.

3. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
  - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an eight-year term of imprisonment.
  - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
  - a. For a second or subsequent offense, to imprisonment for at least five years.
  - b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
  - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or

- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
- ~~7-~~ 8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
- ~~8-~~ 9. When a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense. Once sealed, the court record may not be opened even by order of the court.

## CHAPTER 199

## HOUSE BILL NO. 1105

(Judiciary Committee)

(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact subsections 3 and 5 of section 19-03.1-07, subsection 7 of section 19-03.1-09, and subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 19-03.1-07 of the North Dakota Century Code are amended and reenacted as follows:

3. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:
    - (1) ~~Raw opium~~ Codeine.
    - (2) ~~Opium extracts~~ Dihydroetorphine.
    - (3) ~~Opium fluid extracts~~ Ethylmorphine.
    - (4) ~~Powdered opium~~ Etorphine hydrochloride.
    - (5) Granulated opium.
    - (6) ~~Tincture of opium~~ Hydrocodone.
    - (7) ~~Codeine~~ Hydromorphone.
    - (8) ~~Ethylmorphine~~ Metopon.
    - (9) ~~Etorphine hydrochloride~~ Morphine.
    - (10) ~~Hydrocodone~~ Opium extracts.
    - (11) ~~Hydromorphone~~ Opium fluid.
    - (12) ~~Metopon~~ Oripavine.
    - (13) ~~Morphine~~ Oxycodone.
    - (14) ~~Oxycodone~~ Oxymorphone.

- (15) ~~Oxymorphone~~ Powder opium.
  - (16) ~~Thebaine~~ Raw opium.
  - (17) Thebaine.
  - (18) Tincture of opium.
- b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
  - c. Opium poppy and poppy straw.
  - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that the nondosage substances must include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
  - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).
5. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
  - b. Lisdexamfetamine, its salts, isomers, and salts of isomers.
  - c. Methamphetamine, its salts, isomers, and salts of isomers.
  - e. d. Phenmetrazine and its salts.
  - e. e. Methylphenidate.

**SECTION 2. AMENDMENT.** Subsection 7 of section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:
- a. 3beta,17-dihydroxy-5a-androstane;
  - b. 3alpha,17beta-dihydroxy-5a-androstane;
  - c. 5alpha-androstan-3,17-dione;

- d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
- e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
- f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);
- g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
- h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);
- i. 4-androstenedione (androst-4-en-3,17-dione);
- j. 5-androstenedione (androst-5-en-3,17-dione);
- k. Bolasterone  
(7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
- m. Boldione (androsta-1,4-diene-3,17-dione);
- n. Calusterone  
(7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- ~~o.~~ o. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
- ~~p.~~ p. Dehydrochloromethyltestosterone  
(4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
- ~~q.~~ q. Delta-1-dihydrotestosterone (also known as '1-testosterone')  
(17beta-hydroxy-5alpha-androst-1-en-3-one);
- r. Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17ol)  
(also known as madol);
- ~~s.~~ s. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- ~~t.~~ t. Drostanolone  
(17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- ~~u.~~ u. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
- ~~v.~~ v. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta,  
17beta-dihydroxyandrost-4-en-3-one);
- ~~w.~~ w. Formebolone (2-formyl-17alpha-methyl-11alpha,  
17beta-dihydroxyandrost-1,4-dien-3-one);
- ~~x.~~ x. Furazabol  
(17alpha-methyl-17beta-hydroxyandrostan[2,3-c]-furazan);
- ~~y.~~ y. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;
- ~~z.~~ z. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);

- ~~y~~: aa. 4-hydroxy-19-nortestosterone  
(4,17beta-dihydroxy-estr-4-en-3-one);
- ~~z~~: bb. Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
- ~~aa~~: cc. Mesterolone  
(1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
- ~~bb~~: dd. Methandienone  
(17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);
- ~~cc~~: ee. Methandriol  
(17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);
- ~~dd~~: ff. Methenolone  
(1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- ~~ee~~: gg. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
- ~~ff~~: hh. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
- ~~gg~~: ii. 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
- ~~hh~~: jj. 17alpha-methyl-4-hydroxynandrolone  
(17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- ~~ii~~: kk. Methyldienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
- ~~jj~~: ll. Methyltrienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);
- ~~kk~~: mm. Methyltestosterone  
(17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- ~~ll~~: nn. Mibolerone  
(7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- ~~mm~~: oo. 17alpha-methyl-delta1-dihydrotestosterone  
(17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one)  
(also known as '17-alpha-methyl-1-testosterone');
- ~~nn~~: pp. Nandrolone (17beta-hydroxyestr-4-en-3-one);
- ~~oo~~: qq. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- ~~pp~~: rr. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);
- ~~qq~~: ss. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- ~~rr~~: tt. 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);
- ~~ss~~: uu. 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- vv. 19-nor-4,9(10)-androstadienedione  
(estra-4,9(10)-diene-3,17-dione);

- ~~tt.~~ ww. 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- ~~uu.~~ xx. Norbolethone  
(13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
- ~~vv.~~ yy. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
- ~~ww.~~ zz. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- ~~xx.~~ aaa. Normethandrolone  
(17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
- ~~yy.~~ bbb. Oxandrolone  
(17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);
- ~~zz.~~ ccc. Oxymesterone  
(17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);
- ~~aaa.~~ ddd. Oxymetholone  
(17alpha-methyl-2-hydroxymethylene-17beta-hydroxy  
[5alpha]-androstan-3-one);
- ~~bbb.~~ eee. Stanozolol  
(17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);
- ~~eee.~~ fff. Stenbolone  
(17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);
- ~~ddd.~~ ggg. Testolactone  
(13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid  
lactone);
- ~~eee.~~ hhh. Testosterone (17beta-hydroxyandrost-4-en-3-one);
- ~~fff.~~ iii. Tetrahydrogestrinone  
(13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);
- ~~ggg.~~ jjj. Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

**SECTION 3. AMENDMENT.** Subsection 4 of section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers,

and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Alprazolam.
- b. Barbital.
- c. Bromazepam.
- d. Butorphanol.
- e. Camazepam.
- f. Chloral betaine.
- g. Chloral hydrate.
- h. Chlordiazepoxide.
- i. Clobazam.
- j. Clonazepam.
- k. Clorazepate.
- l. Clotiazepam.
- m. Cloxazolam.
- n. Delorazepam.
- o. Diazepam.
- p. Dichloralphenazone.
- q. Estazolam.
- r. Ethchlorvynol.
- s. Ethinamate.
- t. Ethyl loflazepate.
- u. Fludiazepam.
- v. Flurazepam.
- w. Halazepam.
- x. Haloxazolam.
- y. Indiplon.
- z. Ketazolam.
- z- aa. Loprazolam.

- ~~aa.~~ bb. Lorazepam.
- ~~bb.~~ cc. Lormetazepam.
- ~~ee.~~ dd. Mebutamate.
- ~~dd.~~ ee. Medazepam.
- ~~ee.~~ ff. Meprobamate.
- ~~ff.~~ gg. Methohexital.
- ~~gg.~~ hh. Methylphenobarbital (also known as mephobarbital).
- ~~hh.~~ ii. Midazolam.
- ~~ii.~~ jj. Nimetazepam.
- ~~jj.~~ kk. Nitrazepam.
- ~~kk.~~ ll. Nordiazepam.
- ~~ll.~~ mm. Oxazepam.
- ~~mm.~~ nn. Oxazolam.
- ~~nn.~~ oo. Paraldehyde.
- ~~oo.~~ pp. Petrichloral.
- ~~pp.~~ qq. Phenobarbital.
- ~~qq.~~ rr. Pinazepam.
- ~~rr.~~ ss. Prazepam.
- ~~ss.~~ tt. Quazepam.
- ~~tt.~~ uu. Temazepam.
- ~~uu.~~ vv. Tetrazepam.
- ~~vv.~~ ww. Triazolam.
- ~~ww.~~ xx. Zaleplon.
- ~~xx.~~ yy. Zolpidem.
- ~~yy.~~ zz. Zopiclone.

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 200

### HOUSE BILL NO. 1239

(Representatives Hofstad, S. Meyer, Porter)  
(Senators Heckaman, Oehlke)

AN ACT to amend and reenact section 20.1-01-17 of the North Dakota Century Code, relating to posting of lands to prohibit hunting; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 20.1-01-17 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-01-17. Posting of lands by owner ~~or tenant~~ to prohibit hunting - How posted - Signs defaced.**

1. Only the owner or tenant ~~or an individual authorized by the owner of any~~ land may post ~~it~~ the land by placing signs alongside the public highway or the land giving notice that ~~no~~ hunting is not permitted on the land. The name of the person posting the land must appear on each sign in legible characters. The signs must be readable from the outside of the land and must be placed conspicuously not more than eight hundred eighty yards [804.68 meters] apart. As to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed land. ~~No~~
2. A person may in any manner not deface, take down, or destroy posting signs, or post property without the permission of the owner or tenant or an individual authorized by the owner.
3. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subsection 1, an individual may be found guilty of violating section 20.1-01-18 if the owner, tenant, or individual authorized by the owner substantially complied with subsection 1 and notice against hunting or trespassing is clear from the circumstances.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 201****HOUSE BILL NO. 1217**

(Representatives Kerzman, Froelich, Hanson, Porter)  
(Senators Krauter, Lyson, Wanzek)

AN ACT to amend and reenact section 20.1-01-22 of the North Dakota Century Code, relating to hunting on lands having unharvested oilseed crops; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-22 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-01-22. Hunting game on lands having unharvested crops unlawful.** It is unlawful to hunt or pursue game in unharvested cereal or oilseed crops without permission of the owner or tenant. ~~Such Cereal~~ crops include alfalfa, clover, and other grasses grown for seed. Oilseed crops include sunflower, safflower, rapeseed or canola, crambe, soybeans, and flax.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 202****HOUSE BILL NO. 1188**

(Representatives Porter, Damschen, DeKrey, Hanson)  
(Senators Hogue, Lyson)

AN ACT to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to exploitation of wildlife; to amend and reenact section 20.1-01-26 of the North Dakota Century Code, relating to suspension of hunting, trapping, or fishing privileges; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-26 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-01-26. Suspension of hunting, trapping, or fishing privileges - Surrender and return of license.** In addition to the penalty provided upon conviction under this title, the court may suspend the defendant's hunting, trapping, or fishing privileges for up to three years; however, if the defendant is convicted of an offense under section 2 of this Act, the court may suspend the defendant's hunting, trapping, or fishing privileges for up to the life of the defendant but not less than five years. The court may not suspend the defendant's privileges for a noncriminal violation if the defendant has not been convicted for a violation of this title in the last three years. Upon conviction for a violation of section 20.1-01-18, the court shall suspend the defendant's hunting, fishing, and trapping privileges for a period of at least one year, two years for the second conviction, and three years for the third or subsequent conviction. At the time of the suspension, the court shall determine whether the defendant must successfully complete the hunter education course provided for in section 20.1-03-01.1, as prescribed by the proper state or provincial natural resources or wildlife management agency, before the defendant may purchase a new or obtain the return of a valid hunting license.

Upon imposition of the suspension, the court shall take any hunting, trapping, or fishing license or permit held by the defendant and forward it, together with a certified copy of the suspension order, to the director. Except as otherwise provided in this section, upon expiration of the suspension, the director shall return the person's license or permit if it is still valid. No person may purchase, or attempt to purchase, a hunting, trapping, or fishing license or permit during a suspension period. If the court so ordered, no person who has had a hunting license suspended may purchase or attempt to purchase a hunting license nor may the director return a valid hunting license until the person has successfully completed the course provided for in section 20.1-03-01.1 and as prescribed by the proper state or provincial natural resources or wildlife management agency. A certificate of completion for a similar course issued by any other state or province of Canada is sufficient to meet this requirement. The person shall file proof of that completion with the court.

For the purpose of this section, the term "conviction" includes an admission or adjudication of a noncriminal violation.

**SECTION 2.** A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

**Exploitation of wildlife - Penalty.**

1. A person is guilty of exploitation of wildlife if that person intentionally:
  - a. Commits five or more title 20.1 class A misdemeanor offenses within a two-year period;
  - b. Commits seven or more title 20.1 misdemeanor offenses within a two-year period;
  - c. Furnishes assistance, management, or supervision to an individual who commits or assists in the commission of seven or more title 20.1 misdemeanor offenses within a two-year period; or
  - d. Commits a title 20.1 misdemeanor offense after having been previously convicted of seven or more title 20.1 misdemeanor offenses within a ten-year period.
  
2. Violation of this section is a class C felony and, in addition to other penalties imposed by law, is subject to section 20.1-01-26. The defendant being over a daily or possession limit of fish, small game, or waterfowl is not sufficient as a predicate offense for a conviction under subdivision b or c of subsection 1 unless the state proves that the conduct occurred over more than three days or the person takes or possesses more than four times a daily limit and the state alleges and proves beyond a reasonable doubt that the minimum number of predicate offenses required were committed intentionally. Except for a charge under subdivision d of subsection 1, the state may not charge an individual for both the predicate offense and a charge under this section. A conviction from another state or a federal court for an offense similar to one prescribed in title 20.1 may be used as a conviction under this section.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 203**

**SENATE BILL NO. 2146**

(Transportation Committee)

(At the request of the State Treasurer)

AN ACT to amend and reenact section 20.1-02-16.6 of the North Dakota Century Code, relating to the transfer of motorboat registration fee revenues.

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

**SECTION 1. AMENDMENT.** Section 20.1-02-16.6 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-16.6. Motorboat programs and safety account - Transfer from highway tax distribution fund.** ~~On~~ Each year in the month of July first of each year the state treasurer shall transfer from the highway tax distribution fund, before allocation of the fund under section 54-27-19, to the motorboat programs and safety account an amount equal to two dollars and fifty cents multiplied by the number of motorboats licensed with the game and fish department as of July first of that year.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 204

### SENATE BILL NO. 2165

(Senators Krauter, Lyson)

(Representatives Damschen, DeKrey, Kerzman, Nottestad)

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to an apprentice hunter program; and to amend and reenact section 20.1-03-01.1 and subsection 1 of section 20.1-03-11 of the North Dakota Century Code, relating to hunting licenses and requirements.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 20.1-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-01.1. Director to appoint and train instructors - Prescribe course material and classroom sites - Certify completion.** The director shall provide classroom instruction on, and shall select, train, and certify persons or department personnel qualified to provide instruction on, firearms and bow safety and hunter responsibility, and shall prescribe the course material to be used, classroom locations, and the dates for teaching the course in this state. The director also shall provide an online internet hunter safety education program for individuals age sixteen and over to complete the hunter safety education requirement. The director shall authorize the issuance of a certificate of completion to all persons satisfactorily completing the course.

<sup>106</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No person shall~~ An individual may not hunt, kill, take, or attempt to take any big game without having the appropriate big game hunting license and a locking seal bearing a number corresponding to the number of the big game hunting license or stamp. The locking seal ~~shall~~ must be issued as an integral part of the big game hunting license. ~~No person~~ Except as otherwise provided in this subsection, an individual may not apply for or be issued a big game hunting license if that ~~person's~~ individual's fourteenth birthday does not occur on or before the opening date of the respective big game hunting season. This age limitation does not apply to applicants for big game licenses for hunting by bow and arrow. Each violation of this section ~~shall be~~ is a distinct and separate offense. The following provisions govern youth deer hunting:
  - a. An individual whose twelfth birthday occurs on or before the opening date of the youth deer hunting season but is younger than fourteen years of age is entitled to receive a statewide white-tailed antlerless deer permit but may hunt only in the youth deer hunting season.

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<sup>106</sup> Section 20.1-03-11 was also amended by section 1 of House Bill No. 1167, chapter 205.

- b. An individual hunting under subdivision a must be accompanied by the individual's parent, guardian, or other individual authorized by the individual's parent or guardian. As used in this section, "accompanied" means to stay within a distance that permits uninterrupted visual contact and unaided verbal communication.

**SECTION 3.** A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

**Apprentice hunter validation.** An individual born after December 31, 1961, who is sixteen years of age or older and who does not possess a hunter safety education course certificate of completion may be issued an apprentice hunter validation. An apprentice hunter validation is valid for only one license year in a lifetime. An individual in possession of an apprentice hunter validation may hunt small game and deer only when accompanied by an adult licensed to hunt in this state whose license was not obtained using an apprentice hunter validation. An apprentice hunter validation holder must obtain all required licenses and stamps. For purposes of this section, "accompanied" means to stay within a distance of another individual that permits uninterrupted visual contact in unaided verbal communication.

Approved April 30, 2009

Filed May 1, 2009

**CHAPTER 205****HOUSE BILL NO. 1167**

(Representatives Delzer, Nottestad, Weiler)  
(Senators Freborg, Fischer)

AN ACT to amend and reenact subsection 1 of section 20.1-03-11 of the North Dakota Century Code, relating to eligibility to hunt during the youth deer hunting season.

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

<sup>107</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A person shall may not hunt, kill, take, or attempt to take any big game without having the appropriate big game hunting license and a locking seal bearing a number corresponding to the number of the big game hunting license or stamp. The locking seal ~~shall~~ must be issued as an integral part of the big game hunting license. ~~No person~~ An individual may not apply for or be issued a big game hunting license if that ~~person's~~ individual's fourteenth birthday does not occur on or before the opening date of the respective big game hunting season provided, however, that an individual who is under fourteen years of age and who will be eligible to hunt on the opening date of the regular deer hunting season may hunt during the youth deer season. This age limitation does not apply to applicants for big game licenses for hunting by bow and arrow. Each violation of this section ~~shall be~~ is a distinct and separate offense.

Approved April 16, 2009

Filed April 17, 2009

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<sup>107</sup> Section 20.1-03-11 was also amended by section 2 of Senate Bill No. 2165, chapter 204.

**CHAPTER 206****HOUSE BILL NO. 1240**

(Representatives Hofstad, Hanson, Porter)  
(Senators Hogue, Oehlke)

AN ACT to amend and reenact subsection 4 of section 20.1-03-36.1 of the North Dakota Century Code, relating to guide and outfitter license exemptions.

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

<sup>108</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 20.1-03-36.1 of the North Dakota Century Code is amended and reenacted as follows:

4. A Except as otherwise provided in this subsection, a license is not required for a person to provide services on real property that person owns or leases for the primary pursuit of bona fide agricultural interests or for a nonprofit organization registered with the secretary of state. However, a person who has been convicted of a state or federal criminal game or fish violation within the last three years or whose license to hunt or fish is under suspension or revocation is not exempt from licensure and is subject to subsection 5 of section 20.1-03-37. The director shall determine the number of acres by county exempted from licensure by this subsection and shall publish the results. The director shall provide written information to the public on the possible liability exposure for outfitting under this subsection and on the benefits of liability insurance and proper training.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>108</sup> Section 20.1-03-36.1 was also amended by section 1 of House Bill No. 1567, chapter 207.

**CHAPTER 207****HOUSE BILL NO. 1567**

(Representatives Kasper, Griffin, Hofstad, Ruby, Schneider)

AN ACT to amend and reenact subsection 4 of section 20.1-03-36.1 of the North Dakota Century Code, relating to licensing of outfitters; to provide an expiration date; and to declare an emergency.

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

<sup>109</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 20.1-03-36.1 of the North Dakota Century Code is amended and reenacted as follows:

4. A license is not required for a person to provide services on real property that person owns or leases for the primary pursuit of bona fide agricultural interests of, for a nonprofit organization registered with the secretary of state, or for a person that acts as a booking agent for a person that legally conducts business as an outfitter. A booking agent that refers an individual to an outfitter under this subsection may receive a fee or commission for the referral. The director shall determine the number of acres by county exempted from licensure by this subsection and shall publish the results. The director shall provide written information to the public on the possible liability exposure for outfitting under this subsection and on the benefits of liability insurance and proper training. For purposes of this section, a booking agent means a person that receives only a fee for referring or marketing the services of a legal outfitter in this state.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2011, and after that date is ineffective.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>109</sup> Section 20.1-03-36.1 was also amended by section 1 of House Bill No. 1240, chapter 206.

# GOVERNMENTAL FINANCE

## CHAPTER 208

### HOUSE BILL NO. 1344

(Representatives Dahl, DeKrey)

(Senator Nelson)

AN ACT to amend and reenact sections 21-04-09 and 21-06-07 of the North Dakota Century Code, relating to public deposits.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**21-04-09. Pledge of security in place of depository bond.** The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, the board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any securities are so deposited for safekeeping with any custodian, the custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities pledged. The securities substituted must, at the time of the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of the substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered mail to the public corporation and the depository financial institution a receipt specifically describing and identifying

both the securities substituted and those released and returned to the depository financial institution.

A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution directly or by a financial institution's participation as a member of a reciprocal deposit placement service to the extent that the deposits are insured or guaranteed by the federal deposit insurance corporation or the national credit union administration as determined by the commissioner of financial institutions or an insurance company that is qualified to offer excess deposit insurance in this state and which has a rating of A- or better by A.M. Best Company Inc., or the equivalent rating by another recognized rating organization as determined by the insurance commissioner.

**SECTION 2. AMENDMENT.** Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

**21-06-07. Political subdivisions may invest funds.**

1. Counties, cities, school districts, park districts, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
  - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the

- treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
- b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.
  - e. Certificates of deposit fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate reciprocal deposit placement service as determined by the commissioner of financial institutions.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 209****HOUSE BILL NO. 1264**

(Representatives Klemin, Mueller, Schatz)  
(Senators Cook, Krebsbach)

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to validation of bonds issued by public bodies of the state before July 1, 2009.

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

**SECTION 1. AMENDMENT.** Section 21-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**21-09-05. Application of chapter.** The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body ~~prior to~~ before July 1, 2009.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 210****HOUSE BILL NO. 1114**

(Government and Veterans Affairs Committee)  
(At the request of the State Investment Board)

AN ACT to amend and reenact section 21-10-06 of the North Dakota Century Code, relating to the specific funds under management of the North Dakota state investment board.

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

**SECTION 1. AMENDMENT.** Section 21-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-06. Funds under management of board - Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workforce safety and insurance fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. ~~Veterans' cemetery trust~~ Budget stabilization fund.
10. Health care trust fund.
11. Cultural endowment fund.
12. Petroleum tank release compensation fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

Approved April 16, 2009

Filed April 17, 2009

# GUARANTY, INDEMNITY, AND SURETYSHIP

## CHAPTER 211

### HOUSE BILL NO. 1195

(Representatives Keiser, Ruby, Wald)

AN ACT to create and enact a new section to chapter 22-02 of the North Dakota Century Code, relating to indemnity agreements in motor carrier transportation contracts.

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

**SECTION 1.** A new section to chapter 22-02 of the North Dakota Century Code is created and enacted as follows:

**Indemnity agreement in motor carrier transportation contracts void.**

**1. As used in this section:**

a. "Motor carrier transportation contract" means a contract, agreement, or understanding covering the transportation of property for compensation or hire by the motor carrier; entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or a service incidental to activity described in this subdivision, including storage of property. The term does not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or any other agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

b. "Promisee" includes any agent, employee, servant, or independent contractor who is directly responsible to the promisee. The term does not include a motor carrier that is party to a motor carrier transportation contract with the promisee, and does not include that motor carrier's agent, employee, servant, or independent contractor directly responsible to that motor carrier.

**2. Notwithstanding any provision of law to the contrary, any portion of a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier contract which purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is void and unenforceable to the extent that the loss or damage:**

- a. Occurs during the motor carrier's presence on the promisee's premises and is caused by or results from the negligent or intentional acts or omissions of the promisee; or
- b. Is caused by or results from defects of the equipment used to transport the promisee's property, unless the defects:
  - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
  - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.
3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment as listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008.

Approved April 21, 2009  
Filed April 22, 2009

# HEALTH AND SAFETY

## CHAPTER 212

### SENATE BILL NO. 2168

(Senators J. Lee, Hogue, Warner)  
(Representatives Delmore, Kreidt, Nathe)

AN ACT to create and enact section 23-01-05.5 of the North Dakota Century Code, relating to the confidentiality of autopsy reports; to amend and reenact sections 11-19.1-01, 11-19.1-03, 11-19.1-04, 11-19.1-06, 11-19.1-07, 11-19.1-08, 11-19.1-10, 11-19.1-11, 11-19.1-13, 11-19.1-15, 11-19.1-17, 11-19.1-18, 11-19.1-19, 11-19.1-20, and 23-01-05.4 of the North Dakota Century Code, relating to the powers and duties of the coroner and state forensic examiner; to repeal chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code, relating to the county coroner and the appointment of an assistant coroner; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-01. Definitions.** ~~The following words and phrases when As used in this chapter have the meanings ascribed to them in this section except in those instances when, unless the context clearly indicates a different meaning otherwise requires:~~

1. "Autopsy" means the inspection or dissection of a ~~dead~~ deceased human body for the purpose of inquiring into the cause of death and retention of organs, tissue, or fluids for diagnostic, educational, public health, or research purposes.
2. "Casualty" means death arising from accidental or unusual means.
3. "City" means a city organized under the laws of this state.
4. "Physician" includes physicians and surgeons licensed under ~~the provisions of chapter 43-17; as amended.~~
5. "Suspicious Reportable circumstances" ~~means the existence of~~ includes one or more of the following factors:
  - a. ~~Self-inflicted~~ Obvious or suspected homicidal, suicidal, or accidental injury;
  - b. Firearm injury;
  - c. Severe, unexplained injury;
  - d. Pedestrian driveway Occupant or pedestrian motor vehicle injury;

- e. An injury to a child which is not witnessed by the individual responsible for the child at the time the injury occurred minor;
- f. ~~Inadequate supervision~~ Fire, chemical, electrical, or radiation;
- g. ~~Malnutrition or delay in seeking medical care~~ Starvation;
- h. ~~Confinement~~ Unidentified or skeletonized human remains;
- i. ~~Bathtub or bucket drowning~~ Drowning;
- j. Suffocation, smothering, or strangulation;
- k. Poisoning or illegal drug use;
- l. Prior child abuse or neglect assessment concerns;
- m. Open child protection service case on the victim;
- n. Victim is in the custody of the department of human services, county social services, ~~or the division of juvenile services~~ the department of corrections and rehabilitation or other correctional facility, or law enforcement;
- o. Unexplained death or death in an undetermined manner;
- p. Suspected sexual assault; or
- q. Any other suspicious factor.

**SECTION 2. AMENDMENT.** Section 11-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-03. Appointment of coroner, ~~term, assistant~~ - Term - Vacancy.** ~~The coroner shall be appointed by the board of county commissioners shall appoint a coroner for a term of two five years. The board shall notify the state forensic examiner in writing of any appointment under this section. If such the office shall become of coroner becomes vacant by death, resignation, expiration of the term of office, or otherwise, or when if the coroner becomes permanently unable to perform the duties of office, the board of county commissioners shall appoint a person with the qualifications as hereinafter set forth qualified individual to fill such the vacancy, who shall give and take the oath of office as prescribed for coroners. If the duly appointed, qualified, and acting coroner is absent temporarily from the county, or when on duty with the armed services of the United States, or the state militia, or with the American red cross, or when is unable to discharge the duties of office for any other reason, such the coroner may appoint a person an individual with the qualifications of coroner to act in the coroner's absence, service, or disability, upon taking the prescribed oath for coroners.~~

**SECTION 3. AMENDMENT.** Section 11-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-04. Eligibility for office.** ~~No person shall be eligible for the office of county coroner except a physician who has been duly licensed to practice as such in this state and who is in good standing in the profession.~~

1. Subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner, the following individuals are eligible to serve as coroner:
  - a. A physician licensed under chapter 43-17;
  - b. An advanced practice registered nurse or registered nurse licensed under chapter 43-12.1;
  - c. A physician assistant licensed under chapter 43-17; and
  - d. Any other individual determined by the state forensic examiner to be qualified to serve as coroner.
2. The coroner may appoint assistant or deputy coroners subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner.

**SECTION 4. AMENDMENT.** Section 11-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-06. ~~Persons~~ Individuals authorized to act where no resident physician in absence of coroner.** In ~~such~~ those counties in which ~~no physician is residing or a coroner does not reside or is not available,~~ the duties of coroner as ~~herein provided~~ must be performed by the sheriff, the state highway patrol, or any special agent of the bureau of criminal investigation. The sheriff, the state highway patrol, or special agent shall call upon the nearest ~~physician~~ coroner or deputy coroner from an adjacent county to investigate the medical cause of death of all coroner cases within said county. ~~Where~~ In those situations in which, because of distance or adverse conditions, a ~~physician~~ coroner is not available, the sheriff, the state highway patrol, or special agent shall ~~have~~ request the state forensic examiner or the forensic examiner's designee ~~called in~~ to investigate and certify as to the medical cause of death.

**SECTION 5. AMENDMENT.** Section 11-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-07. ~~Death to be reported to coroner by physician or persons discovering body - Penalty - Notice to state health officer - Right to autopsy Reports of death - Death of minor.~~**

1. Any person who discovers the ~~dead~~ deceased human body, or acquires the first knowledge of the death of any ~~person individual,~~ and any physician with knowledge that a ~~person~~ individual died as a result of criminal or violent means, ~~casualty, suicide, accidental death,~~ or died suddenly when in apparent good health in a suspicious or unusual manner, or died as the result of any other reportable circumstance, shall ~~notify~~ immediately ~~notify~~ the office of coroner or any law enforcement officer of the known facts concerning the time, place, manner, and circumstances of ~~such~~ that death, and any other information ~~which~~ that may be required pursuant to this chapter. Any person who violates ~~the provisions of this section~~ shall be ~~is~~ guilty of a class B misdemeanor.
2. Any person who discovers the ~~dead~~ deceased human body of, or acquires the first knowledge of the death of, any minor who has received or is eligible to receive a ~~certificate of live birth~~ record, when

the minor died suddenly when in apparent good health, shall ~~notify~~ immediately ~~notify~~ law enforcement ~~and~~ ~~or~~ the office of coroner of the known facts concerning the time, place, manner, and circumstances of the death. The death of a minor must be reported to the department of human services as provided under chapter 50-25.1. The coroner shall take custody of the body and immediately ~~notify the state's attorney of the county in which the body was discovered.~~ Within twenty four hours of the notice of a death that occurs under suspicious circumstances, the state's attorney shall consult with a law enforcement agency and the state department of health. The law enforcement agency shall investigate the death and notify the state's attorney of the findings. The coroner shall notify the state ~~health officer~~ forensic examiner of each such death, and shall provide the state ~~health officer~~ forensic examiner the information concerning the death as the state ~~health officer~~ shall require forensic examiner requires. The coroner or the ~~coroner's medical deputy assistant or deputy coroner~~ shall notify the parent or guardian of a child under the age of one year of the right to the performance of an autopsy, at state expense, as provided by this chapter.

**SECTION 6. AMENDMENT.** Section 11-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-08. Records of coroner's office.** ~~It is the duty of the~~ The coroner to shall keep a full and complete record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction records. All records must be kept in the office of the coroner; if the coroner maintains an office as coroner, ~~and if.~~ If the coroner maintains no separate office, ~~then the records must be kept~~ in the office of the recorder of the county, unless the board of county commissioners designates a different official, and. The records must be properly indexed, stating the name, if known, of every deceased person individual, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner ~~shall promptly~~ shall deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. All Except for a report of death and autopsy reports, which may be used and disclosed only as authorized by subsection 4 of section 11-19.1-11, all records of the coroner shall become and remain are the property of the county and are public records.

**SECTION 7. AMENDMENT.** Section 11-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-10. Dead Deceased human bodies to be held pending investigation.** All ~~dead~~ deceased human bodies in the custody of the coroner shall must be held until such time as the coroner after consultation with the state's attorney, the police department of the city, the state highway patrolmen on duty in that county, or the sheriff has reached a decision that it is not necessary to hold the ~~dead~~ body longer to enable the coroner to decide on a diagnosis, giving a reasonable and true cause of death, or that the ~~dead~~ body is no longer necessary to

assist any one of ~~the above named~~ those officials in their duties, ~~but no dead body shall be held longer than twelve hours from the time the coroner was notified without embalming.~~

**SECTION 8. AMENDMENT.** Section 11-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-11. Coroner may perform autopsy Autopsies - Notice of results.**

1. The coroner or the coroner's medical deputy, if the coroner deems it necessary, may take custody of the ~~dead~~ deceased human body for the purpose of autopsy. When the coroner does not deem an autopsy necessary, the sheriff ~~and~~ or state's attorney may direct an autopsy be performed.
2. The autopsy must be performed by the state forensic examiner or by the state forensic examiner's authorized pathologist at a facility approved by the state forensic examiner.
3. Upon the death of a ~~child~~ minor whose cause of death is suspected by the ~~child's~~ minor's parent or guardian or the coroner or the coroner's medical deputy to have been the sudden infant death syndrome, the coroner or the coroner's medical deputy, after consultation with the parent or guardian, shall take custody of the ~~dead~~ body and shall arrange for the performance of the autopsy by a qualified the state forensic examiner or a pathologist designated by the state forensic examiner, unless the county coroner, sheriff, state's attorney, and the parent or guardian all agree that an autopsy is unnecessary. The parents or guardian and the state health officer ~~shall~~ must be promptly notified of the results of that autopsy.
4. A report of death, an autopsy report, and any working papers, notes, images, pictures, photographs, or recordings in any form are confidential but the coroner may use or disclose these materials for purposes of an investigation, inquest, or prosecution. The coroner may disclose a copy of the report of death in accordance with the authority of the state forensic examiner under section 23-01-05.5 and may disclose an autopsy photograph or other visual image or video or audio recording subject to limitations in section 44-04-18.18. The coroner shall disclose a copy of the autopsy report to the state forensic examiner.

**SECTION 9. AMENDMENT.** Section 11-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-13. Cause of death - Determination.** The cause of death, the manner of death, and the mode in which the death occurred, ~~as delivered by the coroner and incorporated in the coroner's verdict,~~ must be incorporated in the death certificate filed with the registrar of vital statistics of this state. The term "sudden infant death syndrome" may be entered on the death certificate as the principal cause of death only if the child is under the age of one year and the death remains unexplained after a case investigation that includes a complete autopsy of the infant at the state's expense, examination of the death scene, and a review of the clinical history of the infant.

**SECTION 10. AMENDMENT.** Section 11-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of body when next of kin cannot be found.** The coroner of the county where in which a death is discovered shall take charge of the case and notify ensure that relatives or friends of the deceased person individual, if known, are notified as soon as possible by telephone, telegram, or otherwise, giving details of the death and disposition of the deceased person individual. If the relatives or friends of the deceased are unknown, the coroner shall dispose of the personal effects and body in the following manner:

1. After using such clothing as may be necessary in the burial of the body, the remaining personal effects of the deceased ~~shall~~ must be turned over to ~~the public administrator law enforcement for appropriate disposition of such personal property in accordance with the laws, regulations, and policies governing the office of the public administrator.~~
2. The remains ~~shall~~ must be:
  - a. Disposed of in accordance with ~~the provisions of section 23-06-14;~~ or
  - b. Buried in accordance with the laws governing the burial of indigent persons within this state.

**SECTION 11. AMENDMENT.** Section 11-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-17. Application.** ~~This The requirements of this chapter applies apply to every county in this state having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties. This chapter does not apply to counties having a population of less than eight thousand and such counties are governed by chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03; these counties shall pay coroner's fees to other counties under subsection 4 of section 11-19.1-16; and these counties are subject to sections 11-19.1-18 through 11-19.1-20.~~

**SECTION 12. AMENDMENT.** Section 11-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-18. State forensic examiner - Authority - Costs.**

1. The state forensic examiner may order an autopsy and exercise all powers and authority bestowed upon the office of the coroner and, at any time, may assume jurisdiction over a deceased human body. Whenever requested to do so by the local coroner, acting coroner, or the local state's attorney, the state forensic examiner or the examiner's designee shall assume jurisdiction over a ~~dead~~ deceased human body for purposes of investigating the cause of death, the manner of death, and the mode in which the death occurred. The state forensic examiner may exercise all powers and authority bestowed upon the office of the coroner. The cost of performing an autopsy, investigation, or inquiry remains with the county, except for an autopsy, investigation, or inquiry resulting from the death of a patient or resident of the state hospital or

any other state residential facility or an inmate of a state penal institution.

2. Except for the cost of an autopsy performed by the state forensic examiner or the examiner's designee and for the cost of an autopsy, investigation, or inquiry that results from the death of a patient or resident of the state hospital or any other state residential facility or an inmate of a state penal institution, all costs with respect to the autopsy, the transporting of the body for autopsy, and the costs of the investigation or inquiry are the responsibility of the county.

**SECTION 13. AMENDMENT.** Section 11-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-19. State forensic examiner - Required reports to state forensic examiner.** ~~The~~ On the form and in the manner prescribed by the state forensic examiner, the coroner or any person individual acting as coroner shall report to the state forensic examiner every death that occurs:

1. ~~As a result of violence or casualty;~~
2. ~~Suddenly when in apparent good health;~~
3. ~~In a suspicious or unusual manner; or~~
4. Involving a patient or resident of the state hospital or any other state residential facility or an inmate of a state, county, or city penal institution of which the coroner is notified or which the coroner investigates.

**SECTION 14. AMENDMENT.** Section 11-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-20. State forensic examiner - Required consultation.** The coroner or any ~~person individual~~ person individual acting as a coroner shall actively consult with the state forensic ~~examiner~~ examiner's office in every death involving an inmate of a state, county, or city penal institution; death involving a child under the age of one when in apparent good health; and death that the coroner or acting coroner believes may have resulted from an accident, a suicide, or a homicide, under suspicious circumstances, or as a result of child abuse or neglect.

**SECTION 15. AMENDMENT.** Section 23-01-05.4 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties.** The state department of health may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a ~~licensed~~ licensed ~~physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession.~~ physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;
2. Consult with local coroners on the performance of their duties as coroners;

- 2- 3. Conduct investigations into the cause of death of and perform autopsies on any ~~dead~~ deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;
- 3- 4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary; ~~and~~
5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and
- 4- 6. Perform other duties assigned by the state health officer.

**SECTION 16.** Section 23-01-05.5 of the North Dakota Century Code is created and enacted as follows:

**23-01-05.5. Autopsy reports - Confidential - Exceptions.**

1. As used in this section:
  - a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.
  - b. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.
2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is a public record subject to disclosure under section 44-04-18.
3. Subject to the limitations on the disclosure of an autopsy photograph or other visual image or video or audio recording of an autopsy required under section 44-04-18.18, any working papers and notes relating to a final autopsy report may be disclosed pursuant to a court order and as otherwise expressly provided by law.
4. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report:
  - a. To any county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.
  - b. To any state's attorney or criminal justice agency, including a prosecutor or criminal justice agency of the United States, any

- state, or any Canadian province, with jurisdiction over an investigation of the death and the state's attorney or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.
- c. To workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.
  - d. To the child fatality review panel if there is no active criminal investigation.
  - e. In accordance with a court order.
5. The state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:
- a. The decedent's personal representative and to the decedent's spouse, child, or parent, upon proof of the relationship, if there is no active criminal investigation.
  - b. A physician or hospital who treated the deceased immediately prior to death if there is no active criminal investigation.
  - c. An insurance company upon proof that the decedent's life was covered by a policy issued by the company if there is no active criminal investigation.
  - d. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.
  - e. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.
6. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

**SECTION 17. REPEAL.** Chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code are repealed.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 213****SENATE BILL NO. 2046**

(Legislative Council)  
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to surveys during construction or renovation projects of health facilities licensed by the state department of health; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Survey program - Health facilities construction or renovation projects.**

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with medicare-certified life safety surveys.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 214****SENATE BILL NO. 2048**

(Legislative Council)  
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 23-01.2 of the North Dakota Century Code, relating to hospitals licensed as primary care or acute care participating in the trauma system; to amend and reenact section 23-27-04.6 of the North Dakota Century Code, relating to licensure of quick response units; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 23-01.2 of the North Dakota Century Code is created and enacted as follows:

**Trauma center designation.**

1. Effective January 1, 2011, a hospital that offers emergency services to the public shall meet trauma center designation standards and participate in the trauma system.
2. The state health council shall adopt rules that allow provisional trauma designation status for a hospital that is partially compliant with trauma designation standards. When issuing a provisional trauma designation, the state health council shall allow a reasonable amount of time, determined by the department, for a hospital to fully meet all trauma designation standards.

**SECTION 2. AMENDMENT.** Section 23-27-04.6 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.6. Quick response units.** ~~Notwithstanding contrary licensing and certification requirements under this chapter, department~~ Department licensure or ~~certification~~ as a quick response unit is not optional. The department's standards under section 23-27-04 for the time when a quick response unit's services must be available may not require twenty-four hour availability.

**SECTION 3. EFFECTIVE DATE.** Section 2 of this Act becomes effective January 1, 2010.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 215

### HOUSE BILL NO. 1323

(Representatives Dahl, DeKrey, Nathe)  
(Senators Olafson, Schneider)

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to preparations for disposition at death; and to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to duty of burial.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

##### **23-06-03. Duty of burial.**

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

person shall honor those instructions, to the extent reasonable and possible, any to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 2 of this Act, or a document of gift for an anatomical gift.

**SECTION 2.** A new section to chapter 23-06 of the North Dakota Century Code is created and enacted as follows:

**Cremation or other lawful disposition of a body - Authorization document - Immunity.**

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.
2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.
3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.
4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to civil liability or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a body in reliance on a document executed pursuant to this section is presumed to be made in good faith.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 216

### SENATE BILL NO. 2237

(Senators Fiebiger, Mathern)  
(Representatives Gruchalla, Klemin)

AN ACT to create and enact a new section to title 23 of the North Dakota Century Code, relating to a health care record registry.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

##### **Health care record registry - Fees.**

1. As used in this section:
  - a. "Health care record" means a health care directive or a revocation of a health care directive executed in accordance with chapter 23-06.5.
  - b. "Registration form" means a form prescribed by the secretary of state to facilitate the filing of a health care record.
2.
  - a. The secretary of state may establish and maintain a health care record registry, through which a health care record may be filed. The registry must be accessible through a website maintained by the secretary of state.
  - b. An individual who is the subject of a health care record, or that individual's agent, may submit to the secretary of state for registration, using a registration form, a health care record executed in accordance with chapter 23-06.5.
3. Failure to register a health care record with the secretary of state under this section does not affect the validity of the health care record. Failure to notify the secretary of state of the revocation of a health care record filed under this section does not affect the validity of a revocation that otherwise meets the statutory requirements for revocation.
4.
  - a. Upon receipt of a health care record and completed registration form, the secretary of state shall create a digital reproduction of the health care record, enter the reproduced health care record into the health care record registry database, and assign each registration a unique file number. The secretary of state is not required to review a health care record to ensure the health care record complies with any particular statutory requirements that may apply to the health care record.
  - b. The secretary of state shall delete a health care record filed with the registry under this section upon receipt of a revocation of the health care record along with that document's file number.

- c. The entry of a health care record under this section does not affect or otherwise create a presumption regarding the validity of the health care record or the accuracy of the information contained in the health care record.
- 5. a. The registry must be accessible by entering the file number and password on the internet website. Registration forms, file numbers, and other information maintained by the secretary of state under this section are confidential and the state may not disclose this information to any person other than the subject of the document, or the subject's agent. The secretary of state may not use information contained in the registry except as provided under this chapter.

  - b. At the request of the subject of the health care record, or the subject's agent, the secretary of state may transmit the information received regarding the health care record to the registry system of another jurisdiction as identified by the requester.
  - c. This section does not require a health care provider to seek to access registry information about whether a patient has executed a health care record that may be registered under this section. A health care provider who makes good-faith health care decisions in reliance on the provisions of an apparently genuine health care record received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section 23-06.5-12. This section does not affect the duty of a health care provider to provide information to a patient regarding health care directives as may be required under federal law.
- 6. The secretary of state may accept a gift, grant, donation, bequest, or other form of voluntary contribution to establish, support, promote, and maintain the registry. Any funds contributed under this subsection and any fees collected under this section must be deposited in the secretary of state's general services operating fund. The secretary of state shall charge and collect a reasonable fee for filing a health care record and a revocation of a health care record.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 217

### SENATE BILL NO. 2195

(Senators Kilzer, Hogue, J. Lee, Nething)  
(Representatives Klemin, Kretschmar)

AN ACT to amend and reenact subsection 3 of section 23-06.6-13 and section 23-06.6-20 of the North Dakota Century Code, relating to revisions and updates to the revised Uniform Anatomical Gift Act.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 23-06.6-13 of the North Dakota Century Code is amended and reenacted as follows:

3. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent or the measures are contrary to reasonable medical standards.

**SECTION 2. AMENDMENT.** Section 23-06.6-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06.6-20. Effect of anatomical gift on advance health care directive.**

1. In this section:
  - a. "Advance health care directive" means a health care directive under chapter 23-06.5, a power of attorney for health care, or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
  - b. "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
  - c. "Health care decision" means any decision made regarding the health care of the prospective donor.
2. If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of an organ a part for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration or advance health care directive expressly provides to the

contrary, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor shall act for the donor to resolve the conflict. If involved in resolving the conflict, the agent or other person authorized by law shall make the decision in accordance with the agent's or person's knowledge of the prospective donor's wishes and religious or moral beliefs as stated orally or as contained in the declaration or advance health care directive. The conflict must be resolved as expeditiously as possible. If the conflict is not resolved expeditiously, the direction of the declaration or advance directive controls. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 23-06.6-09. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contrary to reasonable medical standards.

Approved April 30, 2009  
Filed May 4, 2009

**CHAPTER 218****SENATE BILL NO. 2044**

(Legislative Council)  
(Long-Term Care Committee)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on expansion of basic care bed capacity and the moratorium on expansion of long-term care bed capacity.

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

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

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2007~~ 2009, and July 31, ~~2009~~ 2011, except when:
  - a. A nursing facility converts nursing facility beds to basic care;
  - 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. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
  - c. If the state department of health and the department of human services grant approval of new basic care beds to an entity, the approved entity shall license the beds within forty-eight months from the date of approval.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when 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, ~~2007~~ 2009, and July 31, ~~2009~~ 2011. A nursing facility may not convert licensed nursing bed capacity to basic care bed capacity or convert basic care beds back to nursing facility beds more than one time in a twelve-month period if the beds have been licensed as basic care.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 219****SENATE BILL NO. 2167**

(Senators J. Lee, Flakoll, G. Lee)

(Representatives Delmore, Uglem, Wieland)

AN ACT to provide for a state policy for reuse, recycling, or resale of state-provided medical equipment.

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

**SECTION 1. State agency provision of medical equipment - Policy for reuse, recycling, or resale.** If a state agency uses state funds to provide free medical equipment to an individual, that state agency shall establish a policy addressing the possible reuse, recycling, or resale value of the medical equipment upon replacement of the medical equipment by that state agency or upon disuse of the medical equipment by the individual.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 220****SENATE BILL NO. 2344**

(Senators Marcellais, Bakke, Mathern, Oehlke)  
(Representatives Conrad, Potter)

AN ACT to create and enact two new sections to chapter 23-12 of the North Dakota Century Code, relating to breastfeeding; and to amend and reenact section 12.1-20-12.1 of the North Dakota Century Code, relating to exempting the act of breastfeeding from the offense of indecent exposure.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-12.1. Indecent exposure.**

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
  - a. Masturbates in a public place or in the presence of a minor; or
  - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

**SECTION 2.** Two new sections to chapter 23-12 of the North Dakota Century Code are created and enacted as follows:

**Right to breastfeed.** If the woman acts in a discreet and modest manner, a woman may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be.

**Workplace breastfeeding policies - Infant friendly designation.**

1. An employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes the following:
  - a. Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;
  - b. A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;
  - c. A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in subdivision b; and
  - d. A convenient hygienic refrigerator in the workplace for the temporary storage of the mother's breast milk.
2. The state department of health shall establish guidelines for employers concerning workplace breastfeeding and infant friendly designations.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 221****SENATE BILL NO. 2399**

(Senators Heckaman, Dever, Hogue)  
(Representatives Kaldor, Kerzman, Wrangham)

AN ACT to provide for medical facilities and providers to give notice of programs and payments for ratings.

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

**SECTION 1. Medical facility and provider performance reviews and ratings - Notice.**

1. If a medical facility or provider in this state has a performance review that results in the receipt of a rating, and at any time pays a fee to the person completing the rating, the medical facility or provider shall include a public notice in any promotional or marketing activities referring to the rating information stating that the medical facility or provider made a payment and stating the amount of that payment made to the person performing the rating.
2. Subsection 1 does not apply to a performance review required to maintain licensure or accreditation by governmental or third-party payers or to maintain accreditation by a quality assurance organization.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 222

### SENATE BILL NO. 2366

(Senators Oehlke, Horne)

(Representatives Pinkerton, Weiler)

AN ACT to amend and reenact section 23-15-01 of the North Dakota Century Code, relating to the sale of fireworks.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23-15-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-15-01. Fireworks defined - Sale of fireworks.**

1. The term fireworks means any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation. The term includes any blank cartridge, toy pistol, toy cannon, toy cane, or toy gun in which an explosive other than a toy paper cap is used; balloon that requires fire underneath to propel the balloon; firecracker, torpedo, skyrocket, Roman candle, daygo bomb, sparkler, or other item of like construction; item containing any explosive or flammable compound; or any tablet or other device containing any explosive substance. This section does not apply to any toy paper cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.
2. Any person operating a retail business and who has a retail license as provided in section 23-15-04 may offer for sale and sell at retail that year, to any individual who is at least twelve years of age, only during the period June twenty-seventh through July fifth, the following items:
  4. a. A star light, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball). However, a person may not offer to sell or offer to distribute a skyrocket, customarily known as a bottle rocket, if the outside diameter of the casing is less than five-eighths inch [15.875 millimeters] and the length of the casing is less than three and one-half inches [88.9 millimeters].
  2. b. A helicopter type flyer, total pyrotechnic composition not to exceed twenty grams each in weight.
  3. c. A cylindrical fountain, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].
  4. d. A cone fountain, total pyrotechnic composition not to exceed fifty grams each in weight.

5. e. A wheel, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of a driver tube may not be over one-half inch [12.7 millimeters].
6. f. An illuminating torch or a colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.
7. g. A sparkler or a dipped stick, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.
8. h. A comet or shell, of which the mortar is an integral part, except a comet or shell designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.
9. i. A soft shell firecracker not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.
10. j. A whistle without report, total pyrotechnic composition not to exceed forty grams each in weight.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 223

### SENATE BILL NO. 2050

(Legislative Council)  
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to regulation of emergency medical services operation dispatch; to amend and reenact section 23-27-02, subsection 1 of section 23-27-04, and section 23-27-04.7 of the North Dakota Century Code, relating to the definition of emergency medical services, emergency medical services operation licensure standards, and distribution of property tax revenues to emergency medical services operations; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-02. Definitions.** For the purpose of this chapter, unless the context otherwise requires:

1. "Department" means the state department of health.
2. "Emergency medical services" means the prehospital medical stabilization ~~and~~ or transportation of ~~individuals~~ an individual who ~~are~~ is sick, injured, wounded, or otherwise incapacitated or helpless, or in a real or perceived acute medical condition, by emergency medical services personnel with physician oversight a person that holds oneself out to the public as being in that service or that regularly provides that service. The term includes ~~assessing~~;
  - a. Assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions; or
  - b. Transporting a patient who is in a real or perceived acute medical condition to a hospital emergency room.
3. "Emergency medical services operation" means an entity licensed to offer and provide emergency medical services by emergency medical services personnel with physician oversight. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick response unit services.
4. "Emergency medical services personnel" means individuals who provide emergency medical services for emergency medical services operations. The term includes emergency medical services professionals, drivers, and department-certified emergency medical services providers, such as cardiopulmonary resuscitation drivers and first responders.

5. "Emergency medical services professional" means an individual licensed by the department as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An emergency medical services operation within this state may not operate unless the operation is licensed in accordance with this chapter and rules adopted by the state health council. The rules must include:
  - a. Time when operator's services must be available.
  - b. Type of motor vehicle operator's license needed for drivers of ground vehicles.
  - c. Training standards for operation personnel.
  - d. Equipment and ground vehicle standards.
  - e. Annual license fees.
  - f. Number of personnel required for each run.
  - g. The scope of practice for uncertified drivers, certified personnel, and emergency medical services professionals.
  - h. Performance standards, which may include response time standards.
  - i. Other requirements as may be found necessary to carry out the intent of this chapter.

**SECTION 3. AMENDMENT.** Section 23-27-04.7 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.7. Study of standards of reasonable coverage - County reporting - Use of property tax levies.**

1. ~~During the 2007-08 interim, the state health council shall study the minimum requirements of reasonable emergency medical services coverage which must take into account the response time for emergency medical services. Before July 1, 2008, the state health officer shall report to the legislative council the outcome and recommendations of this study.~~
2. The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health.
3. A taxing district that levies ~~property taxes for support of a special~~ emergency medical services or ambulance service levy shall ensure that every ~~emergency medical services operation~~ ambulance service that ~~operates~~ has portions of its service area in that taxing district

receives a ~~benefit~~ portion of the revenue from this tax. The taxing district shall allocate the special tax levy revenue to each ambulance service based upon the taxable value of the property within each township of the taxing district, allocating the taxable value of each township to the ambulance service that serves the largest area within that township.

**SECTION 4.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Emergency medical services operation communications.** The department may regulate the communications methods and protocols for emergency medical services operations in a manner consistent with the protocols established by the department of emergency services.

**SECTION 5. LEGISLATIVE COUNCIL STUDY - EMERGENCY MEDICAL SERVICES.** The legislative council shall consider studying, during the 2009-10 interim, the emergency medical services funding system within the state, including state and local emergency medical services and ambulance services funding and the feasibility and desirability of transitioning to a statewide funding formula. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 224

### HOUSE BILL NO. 1215

(Representatives Uglen, Kaldor, Pollert, Porter, Potter)  
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to influenza vaccinations administered by emergency medical technicians-paramedics; and to amend and reenact section 23-27-04.4 of the North Dakota Century Code, relating to supervision of emergency medical technicians and paramedics.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23-27-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.4. Supervision of certified or licensed emergency medical technician hospital personnel.** Certified or licensed emergency medical technicians-intermediate and paramedics, who are employed by a hospital ~~and who are working in a nonemergency setting~~ may provide patient care within a scope of practice established by the department. Under this section, these emergency medical services professionals are under the supervision of the hospital's nurse executive.

**SECTION 2.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

#### **Administration of influenza vaccination.**

1. A licensed emergency medical technician-paramedic working for a hospital or an emergency medical services operation may administer the influenza vaccine to an individual who is at least eighteen years of age if:
  - a. The physician providing oversight for the emergency medical services operation or the hospital medical director has established protocols that meet department standards that may be based on the advisory committee on immunization practices of the federal centers for disease control and prevention; and
  - b. The emergency medical technician-paramedic has satisfactorily completed a department-approved course on administering vaccines.

2. If a hospital or emergency medical services operation allows the administration of vaccines under this section, the hospital or emergency medical services operation shall maintain records documenting the emergency medical technician-paramedic's completion of the training required under subsection 1. These records are subject to review by the department.

Approved March 24, 2009

Filed March 24, 2009

## CHAPTER 225

### SENATE BILL NO. 2333

(Senators J. Lee, Fischer, Heckaman)  
(Representatives Klein, Pinkerton, Weisz)

AN ACT to create and enact chapter 23-35.1 of the North Dakota Century Code, relating to the creation of regional public health networks; to provide for a regional public health network task force; to provide for reports to the legislative council; to provide an appropriation; to provide a contingent appropriation; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 23-35.1 of the North Dakota Century Code is created and enacted as follows:

**23-35.1-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. The definitions of section 23-35-01 apply; and
2. "Regional public health network" means a group of public health units that have entered a joint powers agreement or an existing lead multidistrict health unit identified in the emergency preparedness and response region which has been reviewed by the state health officer and has been verified as meeting the requirements of this chapter and chapter 54-40.3.

**23-35.1-02. Regional public health network - Joint powers agreement - Review by state health officer - Criteria.** Before a group of public health units may be designated as a regional public health network, the state health officer shall review the joint powers agreement the districts entered and verify that:

1. The geographical region covered by the regional public health network corresponds to one of the emergency preparedness and response regions established by the state department of health.
2. The joint powers agreement requires that the participating public health units:
  - a. Share various administrative functions and public health services in accordance with subsection 3;
  - b. Comply with requirements the health council adopts by rule; and
  - c. Meet department maintenance of effort funding requirements, which must be calculated based on each unit's dollar or mill levy public health unit contribution in calendar year 2007.
3. The joint powers agreement requires:

- a. A regional public health network to share the following public health services:
- (1) Emergency preparedness and response;
  - (2) Environmental health services; and
  - (3) A regional public health network health officer, although this paragraph does not prohibit a public health unit from appointing a local health officer.
- b. A regional public health network to select and share at least three administrative functions and at least three public health services, as provided under this subdivision:
- (1) "Administrative functions" are:
    - (a) Financial accounting, billing, and accounts receivable;
    - (b) Community assessment and planning;
    - (c) Contract compliance;
    - (d) Public health service improvement planning;
    - (e) Human resource management;
    - (f) Technology support;
    - (g) Budgeting;
    - (h) Workforce development;
    - (i) Public information;
    - (j) Grant writing;
    - (k) Inventory management, including vaccines; and
    - (l) Any other functions approved by the state health officer.
  - (2) "Public health services" are:
    - (a) School health;
    - (b) Nutrition;
    - (c) Family planning;
    - (d) Injury prevention;
    - (e) Violence prevention;
    - (f) Tobacco prevention and cessation;

- (g) Oral health;
  - (h) Cancer prevention;
  - (i) Maternal and child health;
  - (j) Asthma;
  - (k) Diabetes;
  - (l) Cardiovascular health;
  - (m) Physical activity;
  - (n) Immunizations;
  - (o) Communicable disease programs;
  - (p) Mental health;
  - (q) Chronic disease;
  - (r) Public health visits; and
  - (s) Any other services approved by the state health officer.
4. The joint powers agreement provides:
- a. Criteria for the future participation of public health units that were not parties to the original joint powers agreement;
  - b. An application process by which public health units that were not parties to the original joint powers agreement may become participating districts; and
  - c. A process by which public health units that were not parties to the original joint powers agreement may appeal a decision to deny an application to participate in the agreement to the state health officer.
5. The joint powers agreement provides for the structure of the governing body of the network.

**23-35.1-03. Regional public health network - Annual plan.** A regional public health network shall prepare an annual plan regarding the provision of the required and optional public health services and shall submit the plan to the state health officer for approval.

**23-35.1-04. Regional public health networks - Receipt and use of moneys.** The board of a regional public health network may receive and expend moneys for the provision of administrative functions, public health services, and any other lawful activities.

**23-35.1-05. Compensation - Reimbursement - Extraordinary service.** The board of a regional public health network may provide compensation and

reimbursement to any board member who, at the direction of the board, performs extraordinary service on behalf of the board. For purposes of this section, "extraordinary service" means duties beyond those reasonably expected of members of the board and includes travel to and attendance at national meetings or conventions.

## **SECTION 2. STATE DEPARTMENT OF HEALTH - REGIONAL PUBLIC HEALTH NETWORK TASK FORCE - REPORTS TO LEGISLATIVE COUNCIL.**

1. The state health officer shall appoint a regional public health network task force to meet during the 2009-10 interim to establish protocol for the regional public health network.
2. The task force must consist of at least seven members, including at least three members representing local public health districts, three members representing private health care providers, and representatives of the state department of health. The state health officer shall appoint the task force members representing local public health units from a list of names submitted by an organization representing public health administrators. The state health officer shall appoint the task force members representing private health care providers from a list of names submitted by the North Dakota medical association.
3. During the 2009-10 interim, the task force shall provide periodic reports to the legislative council regarding the development of the regional public health network. During the 2009-10 interim, the state health officer shall provide periodic reports to the legislative council regarding the development of the regional public health network.

## **SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS.**

There is appropriated out of any federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funds to local public health units for providing immunization services statewide, according to a funding formula established by the state health council in consultation with local public health units, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 4. CONTINGENT GENERAL FUND APPROPRIATION.** If the federal funds appropriated under section 3 of this Act are not available to provide the sum of \$1,200,000, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funds to local public health units for providing immunization services statewide, according to a funding formula established by the state health council in consultation with local public health units, for the biennium beginning July 1, 2009, and ending June 30, 2011. The state department of health may spend the general fund moneys only to the extent that federal funds are not available to provide the \$1,200,000 appropriated under section 3 of this Act.

General fund amounts appropriated under this section reflect one-time funding and are not a part of the agency's base budget for the 2011-13 biennium.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$275,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding a regional public health network pilot project, in consultation with the regional public health network task force and according to a funding formula established by the state health council in consultation with local public health units, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 6. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 226****SENATE BILL NO. 2403**

(Senators Dever, J. Lee, Triplett)  
(Representatives Keiser, Schneider, Weisz)

AN ACT to create and enact a new section to chapter 23-34 of the North Dakota Century Code, relating to the admissibility of peer review reports; and to amend and reenact sections 23-34-01, 23-34-02, 23-34-03, 23-34-04, and 23-34-06 of the North Dakota Century Code, relating to peer review records and reports.

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

**SECTION 1. AMENDMENT.** Section 23-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-01. Definitions.** As used in this chapter:

1. "Health care organization" means ~~any~~:
  - a. A hospital;
  - b. A hospital medical staff;
  - c. A clinic;
  - d. A long-term or extended care facility;
  - e. An ambulatory surgery center;
  - f. An emergency medical services unit;
  - g. A physician;
  - h. A group of physicians operating a clinic or outpatient care facility;
  - i. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;
  - j. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;
  - k. Any combination of ~~these~~ entities, set forth in subdivisions a through j; or
  - l. Any federally designated state peer review organization.
2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Peer review ~~committee~~ organization" means any:
- a. A health care organization; or
  - b. A committee of a health care organization; which:
    - (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body; which conducts; and
    - (2) Conducts professional peer review.
4. a. "Peer review records" ~~means all data~~ means:
- (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review ~~committee~~ organization as a part of any professional peer review, regardless of when the record is was created. ~~The term does not include original patient source documents. Peer review records also include all communications; and~~
  - (2) Communications relating to a professional peer review, whether written or oral, between peer:
    - (a) Peer review ~~committee~~ organization members; ~~peer~~;
    - (b) Peer review ~~committee~~ organization members and the peer review ~~committee's~~ organization's staff; ~~or peer~~
    - (c) Peer review ~~committee~~ organization members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.
- b. The term does not include original patient source documents.
5. "Professional peer review" means all procedures a peer review ~~committee~~ organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers ~~to improve patient care and treatment or to provide~~ and includes procedures or functions to:
- a. Evaluate and improve the quality of health care;
  - b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
  - c. Develop and establish guidelines for medical care and the costs of medical care;
  - d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;

- e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
- f. Provide quality assurance.

**SECTION 2. AMENDMENT.** Section 23-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-02. Peer review records - Confidentiality.**

1. Peer review records are confidential and may be used by a peer review committee organization and the committee organization members only for conducting a professional peer review.
2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the state department of health, the North Dakota healthcare association, and the North Dakota hospital foundation.
3. The state department of health, the North Dakota healthcare association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.
4. This section does not prohibit access of the state department of health to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under section 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

**SECTION 3.** A new section to chapter 23-34 of the North Dakota Century Code is created and enacted as follows:

**Peer review organization reports - Admissibility.** Any report, data, data compilation, analyses, or summary that is generated by a peer review organization and made available to the state department of health or the public by the state department of health, the North Dakota healthcare association, or the North Dakota hospital foundation, may not be introduced into evidence, for any purpose, in any civil or administrative proceeding.

**SECTION 4. AMENDMENT.** Section 23-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-03. Peer review records - Privileged - Exceptions.**

1. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:
4. a. Records gathered from an original source that is not a peer review committee organization;

2. b. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. c. Peer review records subpoenaed in an investigation conducted by an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1.
2. Any peer review records provided to an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

**SECTION 5. AMENDMENT.** Section 23-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-04. Peer review ~~committee~~ organization - Mandatory reports - Penalty.**

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

**SECTION 6. AMENDMENT.** Section 23-34-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-06. Limitation of liability.**

1. A person furnishing peer review records to a peer review ~~committee~~ organization with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.
2. A health care organization, health care provider, or member of a peer review ~~committee~~ organization is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the health care organization, health care provider, or ~~committee~~ member of the peer review organization acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the health care organization, health care provider, or ~~committee~~ member of the peer review organization.

**CHAPTER 227****HOUSE BILL NO. 1098**  
(Representative Wald)

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

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

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

**23-37-01. (~~Effective through July 31, 2014~~) Declaration of purpose.** The purpose of this chapter is to establish:

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

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

**23-37-02. (~~Effective through July 31, 2014~~) Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.

7. "Department" means the state department of health.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
10. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
11. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
12. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
13. "Petroleum" means any of the following:
  - a. Gasoline and petroleum products as defined in chapter 19-10.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
14. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
15. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
16. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
  - a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.
  - c. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968.
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.

- d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.
  - g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
  - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.
  - j. A tank used for the storage of propane.
  - k. A tank used to fuel rail locomotives or surface coal mining equipment.
  - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
  - m. A portable tank.
  - n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
17. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
18. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

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

**23-37-03. (Effective through July 31, 2014) Petroleum release compensation board.** The petroleum release compensation advisory board consists of five members appointed by the governor, three of whom are active in petroleum marketing, one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in

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

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

**23-37-04. (Effective through July 31, 2014) Administration of fund - Staff.** The administrator shall administer the fund according to this chapter. The administrator shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

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

**23-37-05. (Effective through July 31, 2014) Adoption of rules.** The administrator shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

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

**23-37-06. (Effective through July 31, 2014) Release discovery.** If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

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

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

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

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

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

**23-37-09. (Effective through July 31, 2011) Duty to notify.** This chapter does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

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

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

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

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

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

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

**23-37-12. (Effective through July 31, 2014) Responsibility for cost.** The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

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

**23-37-13. (Effective through July 31, 2014) Liability avoided.** No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

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

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

**23-37-14. (Effective through July 31, 2014) Other remedies.** This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

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

**23-37-15. (Effective through July 31, 2014) Revenue to the fund.** Revenue from the following sources must be deposited in the state treasury and credited to the fund:

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

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

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

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

**23-37-17. (Effective through July 31, 2011) Registration fee.**

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund on or before July 1, 2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not, on or before July 1, 2007, must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for an underground tank for each underground tank for each previous year that the tank was required to

be registered for which a fee was not paid, regardless of ownership in each of those years.

5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

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

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

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

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

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

**23-37-19. (Effective through July 31, 2014) Application for reimbursement.** Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

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

**23-37-20. (Effective through July 31, 2014) Administrator to determine costs.** A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

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

**23-37-21. (Effective through July 31, 2014) Liability of responsible person.** The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

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

**23-37-22. (Effective through July 31, 2014) Reimbursement not subject to attachment.** The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

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

**23-37-23. (Effective through July 31, 2014) Recovery of expenses.** Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

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

**23-37-24. (Effective through July 31, 2014) Costs exceeding reimbursement.** If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

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

**23-37-25. (Effective through July 31, 2014) Coordination of benefits.** If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

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

**23-37-26. (Effective through July 31, 2014) Third-party damages - Participation in actions and review of settlements.**

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who

receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator within fourteen days of the demand or the negotiations.

3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

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

**23-37-27. (Effective through July 31, 2014) Third-party damages - Documentation.**

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23-37-18.

8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

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

**23-37-28. (~~Effective through July 31, 2014~~) Matching federal funds.** The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

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

**23-37-29. (~~Effective through July 31, 2014~~) Fund appropriations.** Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this chapter.

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

**23-37-30. (~~Effective through July 31, 2014~~) Investment of fund.** Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the fund. The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 228****HOUSE BILL NO. 1339**

(Representatives Porter, Delmore, Hawken)  
(Senators Erbele, Nelson)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to hospital designation as a primary stroke center and related services offered by emergency medical services operations.

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

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

**Primary stroke centers.**

1. Effective January 1, 2010, the state department of health shall designate qualified hospitals as primary stroke centers. A hospital seeking designation as a primary stroke center shall apply to the department for that designation and shall demonstrate to the department that the hospital meets the applicable criteria established by the department.
2. The criteria established by the department for designation as a primary stroke center must include a requirement that the hospital be certified as a primary stroke center by the joint commission on accreditation of health care organizations or by a similar accrediting or certifying organization possessing hospital standards recognized nationally by the health care industry and accepted by the department.
3. The department may suspend or revoke a hospital's designation as a primary stroke center, after notice and opportunity for a hearing, if the department determines the hospital is not in compliance with the requirements of this chapter.
4. Annually, the state department of health shall provide a list of hospitals designated as primary stroke centers to each emergency medical services operation licensed in this state. The department shall post to the department's web site a list of the hospitals designated as primary stroke centers.

**Stroke system of care task force.**

1. The state department of health shall establish a stroke system of care task force. The purpose of the task force is to encourage and ensure the establishment of an effective stroke system of care throughout the state. The state health officer, or the officer's designee, shall serve on the task force. The state health officer shall appoint members to the task force who represent rural hospitals, physicians who treat patients in rural areas, and members representing emergency medical services operations that provide services in rural areas of the state. Members of the task force serve at the pleasure of the state health officer.

2. Before April 1, 2010, the stroke system of care task force shall provide the state department of health with recommendations regarding the establishment of an effective stroke system of care in the rural areas of this state. The initial recommendations must include:
  - a. Protocols for the triage, stabilization, and appropriate routing of stroke patients by emergency medical services operations in rural areas; and
  - b. A plan to provide for coordination and communication between rural hospitals, primary stroke centers, and other support services in order to assure that residents of all regions of the state have access to effective and efficient stroke care.
3. The state health council may adopt rules, based on the task force's recommendations.

#### **Stroke triage - Emergency medical services.**

1. Before January 1, 2011, the state department of health shall adopt a nationally recognized standardized stroke-triage assessment tool. The department shall post this standardized stroke-triage assessment tool to the department's website and shall provide a copy to each emergency medical services operation licensed in this state. As a term of licensure under chapter 23-27, each licensed emergency medical services operation shall adopt and implement a stroke-triage assessment tool that is substantially similar to the standardized stroke-triage assessment tool adopted by the department.
2. The department shall work with the stroke task force to establish protocols related to the assessment, treatment, and transport of stroke patients by emergency medical services operations licensed by the state. The protocols may include regional transport plans for the triage and transport of stroke patients to the closest, most appropriate facility, including the bypass of health care facilities not designated as primary stroke centers when it is safe to do so.
3. Effective April 1, 2012, each emergency medical services operation licensed under chapter 23-27 shall comply with this chapter.

**Reports.** Semiannually, each hospital designated as a primary stroke center shall provide the state department of health a report on the center's quality initiatives. The data in the report is an exempt record and is not subject to the state's open records law. However, the department shall make the data in these reports available to state and local government entities that have responsibility for the management and administration of emergency medical services throughout the state. Annually, the department shall compile the report data in aggregate form as a report card and post this report card to the department's website. The results of this report card may be used by the department to conduct training.

**Standard of care.** This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital has been licensed. This chapter must be interpreted to recognize that all patients should be treated individually based on each patient's needs and circumstances.

**Advertisement.** A person may not advertise to the public that a hospital is a primary stroke center unless the hospital has been designated as such under this chapter.

Approved April 21, 2009  
Filed April 22, 2009

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 229

### HOUSE BILL NO. 1340

(Representative Glasheim)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to metropolitan planning organizations; and to amend and reenact section 24-01-04 of the North Dakota Century Code, relating to master street plans developed by municipalities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 24-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**24-01-04. Municipalities to develop master street plan.** ~~Each~~ Except for a municipality located within a designated metropolitan planning organization, each municipality of over five thousand population in this state, according to the latest available census, shall develop and adopt a master street plan cooperatively between the director and the municipal officials, which must ensure the proper location and integration of the state highway connections in the total city street plan. In selecting and designating the master street plan, the cooperating officials shall take into account the more important principal streets that connect the residential areas with business areas, and the streets that carry the important rural traffic into and across the city, to ensure a system of streets upon which traffic can be controlled and protected, in such a manner as to provide safe and efficient movement of traffic within a municipality.

**SECTION 2.** A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

**Metropolitan planning organizations.** Metropolitan planning organizations shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas which encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas of this state while minimizing transportation-related fuel consumption, air pollution, and greenhouse gas emissions. The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area. A metropolitan planning organization is a political subdivision for purposes of chapter 54-52.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 230****HOUSE BILL NO. 1353**

(Representative Weiler)  
(Senators Hogue, Triplett)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to relocation of a utility facility; and to amend and reenact sections 24-01-41, 49-21-01.3, and 49-21-04 of the North Dakota Century Code, relating to facility relocation cost recovery.

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

**SECTION 1. AMENDMENT.** Section 24-01-41 of the North Dakota Century Code is amended and reenacted as follows:

**24-01-41. Relocation of utility facilities.**

1. Whenever the director determines and orders that any utility facility which now is, or hereafter may be, located in, over, along, or under the national system of interstate and defense highways, or urban extension thereof, qualifying for federal aid should be changed, removed, or relocated to accommodate the construction of a project on the national system of interstate and defense highways, including extensions thereof within urban areas, the utility owning or operating such facility shall change, relocate, or remove the same in accordance with the order of the director; provided that the costs of the change, relocation, or removal, including the costs of installing such facilities in a new location, must be ascertained and paid to the affected utility by the state out of state highway funds as part of the cost of such federally aided project, unless such payment would violate a legal contract between the utility and the state.
2. ~~The~~ As used in this section, the term "utility" includes all cooperatively, municipally, publicly, or privately owned utilities, for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public or any part thereof. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. ~~Nothing herein contained may be construed to~~
3. The department, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The department shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The department shall coordinate utility facility relocations with the affected utility in an effort to minimize cost associated with utility facility relocations.
5. When a utility facility needs to be relocated, the department shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.
6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

**SECTION 2.** A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

**Relocation of utility facilities - Political subdivision roads.**

1. Whenever a political subdivision determines and orders that any utility facility that is or may be located in, over, along, or under a road right of way under its authority, qualifying for federal aid, should be changed, removed, or relocated to accommodate the construction of a project, the utility owning or operating the facility shall change, relocate, or remove the utility facility in accordance with the order of the political subdivision; provided that the costs of the change, relocation, or removal, including the cost of installing the facilities in a new location, must be ascertained and paid to the affected utility by the political subdivision as part of the cost of the federally aided project unless the payment would violate a legal contract between the utility and the political subdivision or where the roadway existed before the utility facility.
2. As used in this section:
  - a. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.
  - b. "Political subdivision" includes a county, city and county, city, home rule city, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other municipal, quasi-municipal, or public organization.
  - c. "Utility" includes all cooperatively, municipally, publicly, or privately owned utilities for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public.
3. The political subdivision, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The political subdivision shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.

4. The political subdivision shall coordinate utility facility relocations with the affected utility in an effort to minimize costs associated with utility facility relocations.
5. When a utility facility needs to be relocated, the political subdivision shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.
6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

**SECTION 3. AMENDMENT.** Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.3. Certain price increases prohibited - Essential telecommunications services.** Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement.
2. ~~Nothing in this~~ This section ~~prohibits~~ does not prohibit the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
- 3- 2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
  - a. Price increases may be accumulated up to a percentage total of five percent.
  - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
  - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
  - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
4. ~~3.~~ The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be up to eighteen dollars.
5. ~~4.~~ Subject to the limitations of this section, ~~nothing in this chapter prohibits~~ does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

**SECTION 4. AMENDMENT.** Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-04. Price schedules filed with the commission.** Each telecommunications company shall file with the commission in ~~such the~~ form and detail as ~~# the commission~~ may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices for essential services, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered by ~~such the~~ telecommunications company within this state;
2. All rules ~~and regulations which~~ that in any manner affect the prices charged or to be charged for ~~such~~ essential service; and
3. All new prices and any price increases of essential services at least twenty days before the effective date of the new price or price increase, unless the commission upon application and for good cause allows a lesser time; ~~and except prices changed in accordance with subsection 4 of section 49-21-04.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No.~~ A price or price change is not effective until filed in accordance with this chapter.

Approved March 24, 2009

Filed March 24, 2009

**CHAPTER 231****SENATE BILL NO. 2443**

(Senator Christmann)

(Approved by the Delayed Bills Committee)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to facility relocation cost recovery due to implementation of the American Recovery and Reinvestment Act of 2009; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

**Cost recovery for relocation of utility facilities due to implementation of the American Recovery and Reinvestment Act of 2009.** Notwithstanding any other provision of state law, costs associated with changing, removing, relocating, or installing utility property as a result of or caused by a project funded through implementation of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5] must be paid to the affected utility by the state or the political subdivision from funds provided by the Act, if allowed by federal law, as part of the costs of the project. The payment does not constitute a violation of a legal contract.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2011, and after that date is ineffective.

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 232****SENATE BILL NO. 2223**

(Senators Robinson, Nething)  
(Representatives Delmore, R. Kelsch, Weisz)

AN ACT to provide for regional public transportation pilot projects; and to provide for a report to the legislative assembly.

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

**SECTION 1. REGIONAL PUBLIC TRANSPORTATION COORDINATION PILOT PROJECTS - SPENDING AUTHORITY.** The department of transportation shall develop two public transportation coordination pilot projects in two of this state's planning regions. One project must focus on coordination in a region that does not have a city with a population over thirty-five thousand and one project must focus on coordination in a region that has a city with a population exceeding thirty-five thousand. The department shall implement one project in 2009 and one project in 2010. Each pilot project must have a regional coordination administrator who coordinates the provision of public transportation services to the residents of the region in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services. The regional coordination administrator shall assist communities in public transportation planning in the specified region to develop a structure that will support a coordinated public transportation system. The department shall develop standards for public transportation providers and contractors who provide public transportation within the coordinated public transportation system. These standards must promote coordination among public transportation providers. The department may spend additional funds from gifts, grants, or donations and those additional funds are appropriated for the purposes of this section.

**SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY.** The director of the department of transportation shall report to the sixty-second legislative assembly with findings and recommendations based on the results of the public transportation coordination pilot projects.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 233****SENATE BILL NO. 2054**  
(Legislative Council)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact section 24-02-02.3 of the North Dakota Century Code, relating to department of transportation agreements with tribal governments.

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

**SECTION 1. AMENDMENT.** Section 24-02-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-02.3. Director may enter into agreements with tribal governments.** Notwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. The agreements must be limited to those necessary to meet federal highway program spending requirements. ~~Each agreement may not exceed twenty five thousand dollars.~~

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 234

### HOUSE BILL NO. 1514

(Representatives Onstad, Nathe, Porter, Weiler)  
(Senators Hogue, Warner)

AN ACT to amend and reenact section 24-02-37 of the North Dakota Century Code, relating to use of the special road fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 24-02-37 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-37. State highway fund - Priorities for expenditure - Use of investment income.** The state highway fund, created by law and not otherwise appropriated and allocated, must be applied and used for the purposes named in this section, as follows:

1. Except for investment income as provided in subsection 3, the fund must be applied in the following order of priority:
  - a. The cost of maintaining the state highway system.
  - b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.
  - c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.
2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the office of management and budget and signed by the state auditor under this title must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations.

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit ~~forty eight~~ forty eight percent of the income derived from the interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. The special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. ~~Any moneys in the fund not obligated by the special road committee on June thirtieth of each odd-numbered year must revert to the state highway fund. Any moneys in the fund not obligated by the special road committee by June thirtieth of each odd-numbered year must be held for an additional two years after which the funds revert to the state highway fund.~~

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 235****SENATE BILL NO. 2086**

(Education Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact section 24-02-42 of the North Dakota Century Code, relating to scholarship allowances.

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

**SECTION 1. AMENDMENT.** Section 24-02-42 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-42. Scholarships authorized.** The director is authorized to establish continuing grants of financial aid for study in undergraduate coursework, which meets the needs and mission of the department, at institutions of higher learning in this state. Expenditure of ~~not over twenty thousand dollars annually~~ from highway operating funds is authorized. No individual may receive financial aid in any year exceeding ~~two thousand dollars nor a total exceeding six thousand dollars and an executed contract of employment is a prerequisite~~ the tuition of the institution for which the student is enrolled. The director shall establish the annual expenditure in the department's budget, which includes individual student financial aid limitations to be determined by the director dependent on the available funds. Before any student shall receive the financial aid authorized by this section, the student shall enter into a contract with the department, which must provide that such student shall upon graduation accept employment with the department for a period of time at least equal to the time the student received financial aid benefits, the salary to be in the grade established for the classification assigned. In the event such student is inducted into the armed forces before graduation, such education may then be completed upon that student's return to civil life, and in the event such induction into the armed services is made after graduation the employment contract does not take effect until after such period of service in the armed forces has been completed. Leave of absence without pay will be granted to one whose induction occurs during the period of the life of such contract and the employment will be resumed for the balance of the contract period after such employee has been discharged from the service.

If such student fails to graduate with a degree, or fails to accept employment with the department as above provided, such student shall repay the department, with interest at the rate of six percent per annum, all sums received by the student in financial aid benefits under the contract herein provided, such repayment to be made within a period equal to the time the student received such benefits. For the purpose of this section, defenses of minority or statute of limitations are removed as to any applicant granted a loan by the director and such contracts are in all respects legal and binding. Salary increases to employees having received financial aid by virtue of this section must be based on the same considerations as other employees employed by the department.

The director, with the cooperation and concurrence of the board of higher education, shall prescribe rules for determining the selection of recipients, qualifications, and courses of study. Such rules may cover any areas as may be necessary to assure a source of qualified trained employees for the department.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 236

### SENATE BILL NO. 2147

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to authorization for two design-build contracts for highway or bridge projects; to provide for a report to the legislative assembly; and to provide an expiration date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

**Contracts - Design-build method.** Notwithstanding any other provision of law, the director may use the design-build method of project delivery to expedite the construction of a project by combining the design and construction elements of a highway or bridge project into a single contract, provided that:

1. The design-build method of project delivery may only be used on one signal light project and one box culvert structure project.
2. The director makes a determination in writing that it is appropriate and in the best interests of the public to use the design-build method of project delivery for only these two projects.
3. The department is responsible for the preparation of all environmental documents.
4. The department is responsible for acquisition of needed right of way and for providing for the relocation of utilities that may be in conflict with the project.
5. The director, in conjunction with the appropriate and affected professionals and contractors, adopts policies for procuring the projects using the design-build method of project delivery. These policies must be established before requesting proposals.

The prime design-build firm is not required to be registered to perform design or land surveying services pursuant to state law if the subcontractor actually performing the respective services on behalf of the firm is appropriately registered.

The prime design-build firm is not required to be licensed to perform construction, construction engineering, and inspection pursuant to state law if the subcontractor actually performing the work on behalf of the firm is appropriately licensed.

**SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY.** The director of the department of transportation shall work with the appropriate and affected professionals and contractors to evaluate the design-build method project delivery

system and report to the legislative assembly with findings and recommendations as a result of analyzing the design-build projects delivered in these two projects.

**SECTION 3. EXPIRATION DATE.** Except as otherwise provided in this Act, this Act is effective through December 31, 2013, and after that date is ineffective.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 237

### HOUSE BILL NO. 1495

(Representatives Damschen, Holman, Vigesaa)  
(Senators Olafson, Robinson, Wardner)

AN ACT to amend and reenact subsection 1 of section 24-06-28 and section 24-06-29 of the North Dakota Century Code, relating to obstruction of section lines and highways.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 24-06-28 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A person may not place or cause to be placed any permanent obstruction, ~~stones stone, trees tree or portion of a tree,~~ or rubbish within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as the case may be. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.

**SECTION 2. AMENDMENT.** Section 24-06-29 of the North Dakota Century Code is amended and reenacted as follows:

**24-06-29. Removal of obstructions when section lines opened - Cost.** If ~~any~~ a person places or causes to be placed ~~any stones a stone, trees tree or portion of a tree,~~ or rubbish within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as the case may be, when a public highway is opened ~~along the section line,~~ shall notify the owners of adjacent property to remove the ~~stones stone, trees tree or portion of a tree,~~ or rubbish. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the ~~stones stone, trees tree or portion of a tree,~~ or rubbish within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as the case may be, shall remove the ~~stones stone, trees tree or portion of a tree,~~ or rubbish. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.

Approved April 8, 2009  
Filed April 9, 2009

# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 238

### SENATE BILL NO. 2421 (Senators Mathern, Dever, Wardner) (Representatives Delmore, Svedjan)

AN ACT to amend and reenact subsections 7 and 8 of section 25-03.1-02 and section 25-03.1-11 of the North Dakota Century Code, relating to emergency procedures for mental health commitments; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>110</sup> **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. ~~An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.~~
8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. ~~An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.~~

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<sup>110</sup> Section 25-03.1-02 was also amended by section 1 of Senate Bill No. 2098, chapter 239.

**SECTION 2. AMENDMENT.** Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-11. Involuntary treatment - Examination - Report.**

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
  - a. Evaluations of the respondent's physical condition and mental status.
  - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
  - c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
  - d. The signature of the examiner who prepared the report.
2. For purposes of any examination conducted pursuant to this section:
  - a. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist.
  - b. An evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program.
  - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held

within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES.** During the 2009-10 interim, the legislative council shall consider studying the involuntary mental health commitment procedures under North Dakota Century Code chapter 25-03.1. The study must include an assessment of the availability of psychiatric services in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 239****SENATE BILL NO. 2098**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 12 of section 25-03.1-02 and sections 25-03.1-04, 25-03.1-08, 25-03.1-10, 25-03.1-21, 25-03.1-25, and 25-03.1-34 of the North Dakota Century Code, relating to commitment to a public or private facility of a person requiring treatment due to mental illness or chemical dependency.

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

<sup>111</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
  - b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
  - c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
  - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.

**SECTION 2. AMENDMENT.** Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-04. Screening and admission to a public treatment facility.**

Under rules adopted by the department, screening ~~and admission~~ of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental

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<sup>111</sup> Section 25-03.1-02 was also amended by section 1 of Senate Bill No. 2421, chapter 238.

illness or chemical dependency must be performed, in person whenever reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a physician, psychiatrist, psychologist, or mental health professional to examine the individual.

**SECTION 3. AMENDMENT.** Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional.** Any person eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The attorney shall assist the person in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, ~~or psychologist~~, or addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant

to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

**SECTION 4. AMENDMENT.** Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-10. Involuntary treatment - Court-ordered examination.** If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or psychologist, or addiction counselor who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

**SECTION 5. AMENDMENT.** Section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.**

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon the individual or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days.
2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon the individual or others, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the district court of a different judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:

- a. Continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
  - c. Enter a new order directing that the individual be hospitalized until discharged from the hospital under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court may direct a peace officer to take the individual into protective custody and transport the respondent to a treatment facility.
3. If a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment  $\text{\textcircled{r}}$ , that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that considerations of time and safety do not allow intervention by a court, the designated professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility must immediately accept, if appropriately screened and medically stable, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the evidence presented and other available information:
- a. Release the individual from hospitalization and continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or
  - c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital under section 25-03.1-30.
4. If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

**SECTION 6. AMENDMENT.** Section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-25. Detention or hospitalization - Emergency procedure.**

1. When a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, psychologist, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:
  - a. Without conducting an immediate examination required under section 25-03.1-26; and
  - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.
3. Detention under this section may be:
  - a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
  - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

4. Immediately upon being taken into custody, the person must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, psychiatrist, psychologist, or mental health professional who conveyed the person or who caused the person to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, psychologist, or the mental health professional who caused the person to be conveyed. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that person's condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

**SECTION 7. AMENDMENT.** Section 25-03.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-34. Transfer of patients.**

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from a hospital to another facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. Due consideration must be given to the relationship of the patient to family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any treatment facility licensed by any state for the care and treatment of mentally ill or chemically dependent persons agrees with ~~a parent, a spouse, a brother, a sister, a child of legal age, the patient or patient's guardian of any patient~~ to accept the patient for treatment, the superintendent or director of the treatment facility shall release the patient to the other facility.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ordered hospitalized who is eligible for care or treatment in a treatment facility of that agency, the superintendent or director of the treatment facility may cause the individual's transfer to that agency of the United States for treatment. No person may be transferred to any agency of the United States if the person is confined pursuant to conviction of any felony or misdemeanor or the person has been acquitted of the charge solely on the ground of mental illness unless the court originally ordering confinement of the person enters an order for transfer after appropriate motion and hearing. Any person transferred under this section to an agency of the United States is deemed committed to that agency under the original order of treatment.
3. No facility may transfer a patient to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court that ordered treatment. The patient must be given an opportunity to protest the transfer and to receive a hearing on the protest. The patient's

objection to the transfer must be presented to the court where the facility is located or to a representative of the facility within seven days after the notice of transfer was received. If the objection is presented to a representative of the facility, the representative shall transmit it to the court forthwith. The court shall set a hearing date which must be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 240****HOUSE BILL NO. 1078**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to create and enact a new subsection to section 25-06-02 of the North Dakota Century Code, relating to the facilitation of acquisition of instructional materials in alternate formats to students with print disabilities; to amend and reenact sections 25-06-01 and 25-06-01.1 of the North Dakota Century Code, relating to the facilitation of acquisition of instructional materials in alternate formats to students with print disabilities; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 25-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-06-01. North Dakota vision services - school for the blind - Maintained - Location.** There must be maintained at Grand Forks, in Grand Forks County, a statewide service, resource, and referral center for the education and training of all residents of this state who are blind or have a visual impairment and to serve as the national instructional materials access center authorized user for the purpose of facilitating access to and conversion of accessible instructional materials in alternate formats for use by blind individuals, individuals with visual impairment, and students with other print disabilities, which must be known as the North Dakota vision services - school for the blind.

**SECTION 2. AMENDMENT.** Section 25-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-06-01.1. Definitions.** For purposes of this chapter; ~~an~~

1. An individual who is blind means an individual who is totally blind or whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than twenty degrees; ~~and an~~
2. An individual with a visual impairment means an individual with an impairment in vision which, even with correction, adversely affects the individual's functional ability; and
3. A student with print disabilities means a student enrolled in elementary or secondary school who has an individualized education program, which includes documentation of either an inability to read or use standard printed material as a result of physical limitations or a reading disability resulting from an organic dysfunction that has been certified by competent authority to be of sufficient severity to prevent reading of printed material in a normal manner.

**SECTION 3.** A new subsection to section 25-06-02 of the North Dakota Century Code is created and enacted as follows:

Serve as the national instructional materials access center authorized user for the purpose of facilitating access to and conversion of accessible instructional materials in alternate formats for use by blind individuals, individuals with visual impairment, and students with other print disabilities.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,554, or so much of the sum as may be necessary, to the North Dakota vision services - school for the blind for the purpose of serving as the national instructional materials accessibility center authorized user to facilitate access to and conversion of accessible instructional materials in alternate formats for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved March 19, 2009

Filed March 24, 2009

## CHAPTER 241

### SENATE BILL NO. 2211

(Senators Nelson, Lyson, Oehlke)  
(Representatives Hawken, Pinkerton, Potter)

AN ACT to create and enact a new section to chapter 25-13 of the North Dakota Century Code, relating to killing or injuring a service animal; to amend and reenact sections 25-13-01.1, 25-13-02, 25-13-02.1, 25-13-03, 25-13-04, and 25-13-05 of the North Dakota Century Code, relating to service animals; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 25-13-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-13-01.1. Definitions.** For purposes of this chapter:

1. "Assistance dog" includes a dog that has been specially trained to assist an individual with a disability. The term includes guide dogs that guide individuals who are legally blind; hearing dogs that alert individuals who are hard of hearing to specific sounds; and service dogs for individuals with disabilities other than blindness or deafness. The term does not include a dog that is not trained to mitigate an individual's disability, but the presence of which is to provide for the comfort, protection, or personal defense of an individual.
2. "Service dogs" includes dogs "service animal" means any guide dog, signal dog, or other animal trained to do work, perform a variety of physical tasks, including pulling or provide assistance for the benefit of an individual with a disability. The term includes an animal trained to provide assistance or protection services to an individual with a disability, pull a wheelchair, lending lend balance support, retrieving retrieve dropped objects, and providing or provide assistance in a medical crisis.

**SECTION 2. AMENDMENT.** Section 25-13-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-13-02. Individual with a disability - ~~Assistance dog~~ Service animal - Admission to public places.** An individual with a disability is entitled to be accompanied by ~~an assistance dog~~ a service animal in places of public accommodations, common carriers, facilities of a health care provider, and all places to which the public is generally invited, without being required to pay an extra charge for the ~~assistance dog animal~~; provided, that the individual is liable for any damage done to the premises or facility by the ~~assistance dog animal~~.

**SECTION 3. AMENDMENT.** Section 25-13-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-13-02.1. Trainer and assistance dog a service animal in training - Admission to public places.**

1. A trainer with ~~an assistance dog~~ a service animal in training may enter any place of public accommodation, common carrier, facility of a health care provider, and any place to which the public is generally invited, without being required to pay an extra charge for the ~~assistance dog~~ service animal in training, provided:
  - a. The trainer notifies an onsite manager that ~~an assistance dog~~ a service animal in training is being brought onto the premises;
  - b. The trainer wears a photo identification card issued by a nationally recognized ~~dog~~ service animal training program; and
  - c. The trainer is liable for any damage done to the premises or facility by the ~~assistance dog~~ service animal in training.
2. Upon receiving notice as provided in subsection 1, the onsite manager may not deny admission to the trainer and the ~~assistance dog~~ service animal in training without good cause.

**SECTION 4. AMENDMENT.** Section 25-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-13-03. Driver of motor vehicle - Precaution - Individual with assistance dog service animal.** If the driver of a motor vehicle approaches an individual who is blind or visually impaired and who is carrying a cane predominately white or metallic in color, with or without a red tip, or who is accompanied by ~~an assistance dog a service animal~~, the driver shall take all reasonable precautions to avoid injury to the individual and the ~~assistance dog~~ service animal. Any driver who fails to take reasonable precautions is liable to the individual for any injury caused. An individual who is blind or visually impaired and not carrying a cane or an individual with a disability who is not accompanied by ~~an assistance dog a service animal~~ has all of the rights and privileges conferred by law upon other individuals. The failure of an individual who is blind or visually impaired to carry a cane or the failure of an individual with a disability to be accompanied by ~~an assistance dog a service animal~~ is not by itself evidence of fault.

**SECTION 5. AMENDMENT.** Section 25-13-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-13-04. Penalty for interfering or denying use of facilities.** Any person who denies or interferes with admittance to or enjoyment of the public places or facilities enumerated in section 25-13-02 or otherwise interferes with the rights of an individual who is blind or visually impaired, or with the rights of an individual who is accompanied by ~~an assistance dog a service animal~~, is guilty of a class A misdemeanor. This section does not apply to a denial of admission under section 25-13-02.1.

**SECTION 6.** A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

**Killing or injury of service animal - Penalty.**

1. A person is guilty of a class C felony and is subject to a civil penalty of up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a service animal.
2. A person is guilty of a class A misdemeanor and is subject to a civil penalty of up to five thousand dollars if that person willfully:
  - a. Harasses, taunts, or provokes a service animal; or
  - b. Interferes with a service animal while the animal is working.
3. This section does not apply to a veterinarian who terminates the life of a service animal to relieve the animal of undue suffering and pain.

**SECTION 7. AMENDMENT.** Section 25-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**25-13-05. State employment of individuals who are blind and or otherwise disabled.** It is the policy of this state that ~~the~~ individuals who are blind, the visually handicapped, and the impaired, or otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as ~~the able-bodied~~ individuals who are not disabled, unless the particular disability prevents the performance of the work involved.

Approved April 8, 2009  
Filed April 9, 2009

# INSURANCE

## CHAPTER 242

### HOUSE BILL NO. 1136

(Judiciary Committee)

(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-01-07 and 26.1-01-08.1 of the North Dakota Century Code, relating to fees chargeable by the insurance commissioner.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>112</sup> **SECTION 1. AMENDMENT.** Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-07. Fees chargeable by commissioner.** The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
2. For each original certificate of authority issued upon admittance, one hundred dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, fifty dollars.
3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.
5. For filing bylaws or amendments thereof, ten dollars.
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.
8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.

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<sup>112</sup> Section 26.1-01-07 was also amended by section 1 of House Bill No. 1141, chapter 243, and section 1 of House Bill No. 1192, chapter 252.

9. For filing an annual statement, twenty-five dollars.
10. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.
11. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.
12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits and for any renewal of the certificate, ten dollars.
13. ~~For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.~~
44. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.
- ~~14.~~ 14. For issuing and each annual renewal of a surplus lines insurance producer's or insurance consultant's license, ten dollars.
- ~~15.~~ 15. For issuing an insurance producer's license, one hundred dollars.
- ~~16.~~ 16. For issuing a duplicate of any license or registration issued under this title, ten dollars.
- ~~17.~~ 17. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.
- ~~18.~~ 18. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.
- ~~19.~~ 19. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
- ~~20.~~ 20. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
- ~~21.~~ 21. For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.

- ~~23.~~ 22. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.
- ~~24.~~ 23. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.
- ~~25.~~ 24. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.
- ~~26.~~ 25. For issuing and each annual renewal of a license to an advisory organization, fifty dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, ~~46, 49, 20,~~ and 24 15, 18, 19, and 20.

However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

**SECTION 2. AMENDMENT.** Section 26.1-01-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-08.1. Electronic filings allowed.**

1. Notwithstanding any other provision of this title, the commissioner may adopt rules that allow either an applicant or a licensee to file documents electronically with the commissioner or the commissioner's designee. The rules may contain procedures for the electronic filing of the following:
  - a. Any document required as part of an application for a license under this title;
  - b. Any document required to be filed by an applicant or licensee to maintain the license in good standing;
  - c. Any fee required under this title; and
  - d. Any other document required or permitted to be filed.
2. This section may not be interpreted to supersede any other provision of law that requires the electronic filing of a document or to require an applicant or licensee to make any other filing electronically. The commissioner or the commissioner's designee may charge a processing fee for electronic filing. A fee charged for the processing of an electronic filing is in addition to any other fee imposed for the filing. Processing fees charged for an electronic filing are limited to the lesser of twenty dollars per transaction or the actual cost of the electronic transaction

charged by the designee processing the filing. If the actual cost of processing an electronic filing exceeds twenty dollars per transaction the commissioner may adopt rules to increase an electronic processing fee not to exceed the actual cost charged by the designee.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 243****HOUSE BILL NO. 1141**

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

AN ACT to amend and reenact subsection 15 of section 26.1-01-07 of the North Dakota Century Code, relating to fees charged for issuing and renewing a surplus lines insurance producer's or insurance consultant's license.

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

<sup>113</sup> **SECTION 1. AMENDMENT.** Subsection 15 of section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

15. For issuing ~~and a surplus lines insurance producer's or insurance consultant's license, one hundred dollars.~~ For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, ~~ten~~ twenty-five dollars.

Approved March 19, 2009  
Filed March 24, 2009

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<sup>113</sup> Section 26.1-01-07 was also amended by section 1 of House Bill No. 1136, chapter 242, and section 1 of House Bill No. 1192, chapter 252.

**CHAPTER 244****SENATE BILL NO. 2104**

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

AN ACT to create and enact a new subsection to section 26.1-04-03 of the North Dakota Century Code, relating to unfair compensation of insurance company employees.

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

**SECTION 1.** A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Unfair compensation. Basing the compensation, including performance bonuses or incentives, of claims employees or contracted claims personnel on the following:

- a. The number of policies canceled.
- b. The number of times coverage is denied.
- c. Use of a quota limiting or restricting the number or volume of claims.
- d. Use of an arbitrary quota or cap limiting or restricting the amount of claims payments without due consideration to the merits of the claim.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 245****SENATE BILL NO. 2181**

(Senators Klein, Horne, Nodland)  
(Representatives Kasper, Vigesaa)

AN ACT to amend and reenact subsection 1 of section 26.1-06.1-31 of the North Dakota Century Code, relating to contracts of reinsurance.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-06.1-31 of the North Dakota Century Code is amended and reenacted as follows:

1. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of the delinquency proceedings unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
  - a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
  - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to such payees.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 246****SENATE BILL NO. 2214**

(Senators J. Lee, Dever, Warner)  
(Representatives N. Johnson, Kaldor, Weisz)

AN ACT to amend and reenact section 26.1-08-12 of the North Dakota Century Code, relating to comprehensive health association of North Dakota eligibility provisions.

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

**SECTION 1. AMENDMENT.** Section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-12. Eligibility.**

1. The association must be open for enrollment by eligible individuals. Eligible individuals shall apply for enrollment in the association by submitting an application to the lead carrier. The application must:
  - a. ~~Provide the name, address, and age of the applicant.~~
  - b. ~~Provide the length of applicant's residence in this state.~~
  - c. ~~Provide the name, address, and age of spouse and children, if any.~~
  - d. ~~Provide a designation of coverage desired.~~
  - e. Be be completed fully and accompanied by premium and evidence to prove eligibility.
2. Within thirty days of receipt of the application, the lead carrier shall either reject the application for failing to comply with the requirements of this section or forward the eligible individual a notice of acceptance and billing information.
3. At the option of the eligible individual, association coverage is effective:
  - a. For an eligible individual applying under subsection 10 or 11, on the signature date of the application.
  - b. For an eligible individual applying under subparagraph a of paragraph 1 of subdivision a of subsection 5 or under subparagraph a of paragraph 1 of subdivision c of subsection 5:
    - (1) On the day following the date shown on the written evidence;
    - (2) On the signature date of the application, if it is at least one day and less than one hundred eighty days following the date shown on the written evidence; or



- (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
    - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
    - (c) Written evidence that an insurer has offered to issue comparable insurance at a rate exceeding the association benefit rate.
    - (d) Written evidence that the applicant has reached the lifetime maximum coverage amount on the most recent health insurance coverage.
  - (2) Is not enrolled in health benefits with the state's medical assistance program.
- b. A Health Insurance Portability and Accountability Act of 1996 applicant:
  - (1) An individual who meets the federally defined eligibility guidelines as follows:
    - (a) Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01; ~~the most recent of which is covered under a group health plan, governmental plan, medicaid, or church plan;~~
    - (b) Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;
    - (c) Is not eligible for coverage under medicare or a group health benefit plan as the term is defined in section 26.1-36.3-01;
    - (d) Does not have any other health insurance coverage;
    - (e) Has not had the most recent qualifying previous coverage described in subparagraph a terminated for nonpayment of premiums or fraud; and
    - (f) If offered under the option, has elected continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage has exhausted.
  - (2) Is and continues to be a resident of the state.
  - (3) Is not enrolled in health benefits with the state's medical assistance program.

- c. An applicant age sixty-five and over or disabled:
- (1) An individual who is eligible for medicare by reason of age or disability and has been a resident of this state and continues to be a resident of this state who has received from at least one insurance carrier within one hundred eighty days of the date of application, one of the following:
    - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
    - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
    - (c) Written evidence that an insurer has offered to issue comparable insurance at a rate exceeding the association benefit rate.
  - (2) Is not enrolled in health benefits with the state's medical assistance program.
- d. A Trade Adjustment Assistance Reform Act of 2002 applicant:
- (1) A trade adjustment assistance, pension benefit guarantee corporation individual applicant who:
    - (a) Has three or more months of qualifying previous health insurance coverage at the time of application;
    - (b) Has applied for coverage within sixty-three days of the termination of the individual's previous health insurance coverage;
    - (c) Is and continues to be a resident of the state;
    - (d) Is not enrolled in the state's medical assistance program;
    - (e) Is not imprisoned under federal, state, or local authority; and
    - (f) Does not have health insurance coverage through:
      - [1] The applicant's or spouse's employer if the coverage provides for employer contribution of fifty percent or more of the cost of coverage of the spouse, the eligible individual, and the dependents or the coverage is in lieu of an employer's cash or other benefit under a cafeteria plan.

- [2] A state's children's health insurance program, as defined under section 50-29-01.
- [3] A government plan.
- [4] Chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care.
- [5] Part A or part B of title XVIII of the federal Social Security Act [42 U.S.C. 1395 et seq.] relating to health insurance for the aged and disabled.
- (2) Coverage under this subdivision may be provided to an individual who is eligible for health insurance coverage through the federal Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272; 100 Stat. 82]; a spouse's employer plan in which the employer contribution is less than fifty percent; or the individual marketplace, including continuation or guaranteed issue, but who elects to obtain coverage under this subdivision.
6. The board and lead carrier shall develop a list of medical or health conditions for which an individual must be eligible for association coverage without applying for health insurance coverage under subdivisions a and c of subsection 5. Individuals with written evidence of the existence or history of any medical or health conditions on the approved list may not be required to provide written evidence of rejection or refusal, a rate that exceeds the association rates, ~~or substantially reduced coverage, or the lifetime maximum amount being reached.~~
7. A rejection or refusal by an insurer offering only stop-loss, excess of loss, or reinsurance coverage with respect to an applicant under subdivisions a and c of subsection 4 5 is not sufficient evidence to qualify.
8. A traditional applicant, as specified under subdivision a of subsection 5, may have insurance coverage, other than the state's medical assistance program, with an additional commercial insurer; however, the association will reimburse eligible claim costs as payer of last resort.
9. An individual who is eligible for association coverage as specified under subdivision c of subsection 5 may not have more than one policy that is a supplement to part A or part B of medicare relating to health insurance for the aged and disabled. The individual may obtain association coverage as a traditional applicant as specified under subdivision a of subsection 5 which is concurrent with a supplement policy offered by a commercial carrier. However, the association will reimburse eligible claims as payer of last resort.
10. ~~Each resident dependent of an individual who is eligible for association coverage~~ If an individual is enrolled in association coverage, that individual's resident dependent is also eligible for association coverage.

11. Each spouse of an individual who is eligible for association coverage with a preexisting maternity condition. If an individual is enrolled in association coverage, that individual's resident spouse is also eligible for association coverage.
12. A newly born child without health insurance coverage is covered through the mother's association benefit plan for the first thirty-one days following birth. Continued coverage through the association for the child will be provided if the association receives an application and the appropriate premium within thirty-one days following the birth. This coverage is not available to an applicant under subdivision c of subsection 5.
13. Preexisting conditions.
  - a. Association coverage must exclude charges or expenses incurred during the first one hundred eighty days following the effective date of coverage for any condition for which medical advice, diagnosis, care, or treatment was recommended or received during the one hundred eighty days immediately preceding the signature date of the application.
  - b. Association coverage must exclude charges or expenses incurred for maternity during the first two hundred seventy days following the effective date of coverage.
  - c. Any individual with coverage through the association due to a catastrophic condition or major illness who is also pregnant at the time of application is eligible for maternity benefits after the first one hundred eighty days of coverage.
  - d. A preexisting condition may not be imposed on an individual who is eligible under subparagraph d of paragraph 1 of subdivision a of subsection 5 or subdivision b or d of subsection 5.
14. Waiting periods do not apply ~~to an individual who:~~
  - a. ~~is receiving~~ To nonelective treatment or procedures for a congenital or genetic disease.
  - b. ~~Has~~ To an individual who has obtained coverage as a federally eligible individual as defined in subdivision b of subsection 5.
  - c. ~~Has~~ To an individual who has obtained coverage as an eligible person under subdivision a or c of subsection 5, allowing for a reduction in waiting period days by the aggregate period of qualifying previous coverage in the same manner as provided in subsection 3 of section 26.1-36.3-06 and provided the association application is made within sixty-three days of termination of the qualifying previous coverage.
  - d. ~~Has~~ To an individual who has obtained coverage as an eligible individual under subdivision d of subsection 5.

- e. To an individual who has obtained coverage as an eligible individual under subparagraph d of paragraph 1 of subdivision a of subsection 5.
15. An individual is not eligible for coverage through the association if:
- a. The individual is enrolled in health benefits with the state's medical assistance program.
  - b. The individual has previously terminated association coverage unless twelve months have lapsed since such termination. This limitation does not apply to an applicant who is a federally defined eligible individual as defined under subparagraph d of paragraph 1 of subdivision a of subsection 5 or subdivision b of subsection 5.
  - c. The association has paid out one million dollars in benefits on behalf of the individual.
  - d. The individual is imprisoned under federal, state, or local authority. This limitation does not apply to an applicant who is a federally defined eligible individual as defined under subdivision b of subsection 5.
  - e. The individual's premiums are paid for or reimbursed under any government-sponsored program, government agency, health care provider, nonprofit charitable organization, or the individual's employer. However, this subdivision does not apply if the individual's premiums are paid for or reimbursed under a program established under the federal Trade Adjustment Assistance Reform Act of 2002 [Pub. L. 107-210; 116 Stat. 933].
16. A period of creditable coverage is not counted with respect to the enrollment of an individual who seeks coverage under this chapter if after such period and before the enrollment date, the individual experiences a significant break in coverage which is more than sixty-three days.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 247****SENATE BILL NO. 2318**

(Senators Dever, Erbele, Heckaman, J. Lee)  
(Representatives Kreidt, L. Meier)

AN ACT to create and enact section 26.1-18.1-03.1 of the North Dakota Century Code, relating to bond requirements for qualified programs of all-inclusive care for the elderly; and to amend and reenact section 26.1-18.1-01 of the North Dakota Century Code, relating to the regulation of qualified programs of all-inclusive care for the elderly.

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

**SECTION 1. AMENDMENT.** Section 26.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-18.1-01. Definitions.**

1. "Basic health care services" means the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory, and diagnostic and therapeutic radiological services.
2. "Capitated basis" means fixed per member per month payment or percentage of premium payment wherein the provider assumes the full risk for the cost of contracted services without regard to the type, value, or frequency of services provided. For purposes of this definition, capitated basis includes the cost associated with operating staff model facilities.
3. "Carrier" means a health maintenance organization, an insurer, a nonprofit hospital and medical service corporation, or other entity responsible for the payment of benefits or provision of services under a group contract.
4. "Copayment" means an amount an enrollee must pay in order to receive a specific service which is not fully prepaid.
5. "Deductible" means the amount an enrollee is responsible to pay out of pocket before the health maintenance organization begins to pay the costs associated with treatment.
6. "Enrollee" means an individual who is covered by a health maintenance organization.
7. "Evidence of coverage" means a statement of the essential features and services of the health maintenance organization coverage which is given to the subscriber by the health maintenance organization or by the group contractholder.

8. "Extension of benefits" means the continuation of coverage under a particular benefit provided under a contract following termination with respect to an enrollee who is totally disabled on the date of termination.
9. "Grievance" means a written complaint submitted in accordance with the health maintenance organization's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization relative to the enrollee.
10. "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specified group. The group contract may include coverage for dependents.
11. "Group contractholder" means the person to which a group contract has been issued.
12. "Health maintenance organization" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles or both. However, a qualified program of all-inclusive care for the elderly is not a health maintenance organization.
13. "Health maintenance organization producer" means an insurance producer, as defined in section 26.1-26-02, who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for that person, or a person who advertises or otherwise holds out to the public as such.
14. "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include dependents of the subscriber.
15. "Insolvent" or "insolvency" means that the organization has been declared insolvent and placed under an order of liquidation by a court of competent jurisdiction.
16. "Managed hospital payment basis" means agreements wherein the financial risk is primarily related to the degree of utilization rather than to the cost of services.
17. "Net worth" means the excess of total admitted assets over total liabilities, but the liabilities do not include fully subordinated debt.
18. "Participating provider" means a provider as defined in subsection 20 19 who, under an express or implied contract with the health maintenance organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than copayment or deductible, directly or indirectly from the health maintenance organization.
19. ~~"Person" means any natural or artificial person including individuals, partnerships, associations, trusts, or corporations.~~

20. "Provider" means any physician, hospital, or other person licensed or otherwise authorized to furnish health care services.
20. "Qualified program of all-inclusive care for the elderly" means a program that:
- a. Is sponsored by a religious or charitable organization that is itself or is controlled by an entity organized under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)];
  - b. Has been approved by the centers for medicare and medicaid services of the United States department of health and human services to operate, and is currently operating as, a program of all-inclusive care for the elderly; and
  - c. Has revenues from private pay sources which do not exceed ten percent of the program's total revenues.
21. "Replacement coverage" means the benefits provided by a succeeding carrier.
22. "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the health maintenance organization, or in the case of an individual contract, the person in whose name the contract is issued.
23. "Uncovered expenditures" means the costs to the health maintenance organization for health care services that are the obligation of the health maintenance organization, for which an enrollee may also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made that are acceptable to the commissioner.

**SECTION 2.** Section 26.1-18.1-03.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-18.1-03.1. Bond or insurance requirement.** A qualified program of all-inclusive care for the elderly that operates in this state shall maintain a surety bond, in the amount of two hundred fifty thousand dollars. Any surety bond issued under this section must authorize recovery by the commissioner on behalf of any person in this state that sustained damages as the result of unfair practices, conviction of fraud, or failure by a qualified program of all-inclusive care for the elderly to perform a contractual obligation owed to the person.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 248

### HOUSE BILL NO. 1294 (Representatives Wald, Monson)

AN ACT to create and enact section 26.1-21-24 of the North Dakota Century Code, relating to bond purchases by state agencies and political subdivisions; and to amend and reenact subsection 3 of section 26.1-01-07.1 and sections 26.1-21-07, 26.1-21-09, and 26.1-21-10 of the North Dakota Century Code, relating to the insurance regulatory trust fund and insurance provided to state agencies and political subdivisions under the state bonding fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided by law, at after the end of each fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the state treasurer office of management and budget shall transfer, after all fiscal year expenses have been paid, any cash fund balance remaining in the insurance regulatory trust fund that exceeds one million dollars to the general fund.

<sup>114</sup> **SECTION 2. AMENDMENT.** Section 26.1-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-07. Coverage.** The amount of coverage afforded to each state agency or political subdivision must be determined by the commissioner based upon the amount of money or property handled and the opportunity for defalcation. The coverage may be greater than but not less than the amount required by law or determined under law for a position. The coverage for a state legislative or judicial branch agency, however, may be determined by the legislative council or supreme court, respectively. Notwithstanding any other provision of law, the commissioner may issue bonds in such amounts as the commissioner determines necessary to carry out the purposes of the fund and, in determining the amount of coverage to be offered, the commissioner may consider the reserves necessary to pay the bonds and for all other necessary costs or expenses to carry out the purposes of the fund.

**SECTION 3. AMENDMENT.** Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-09. Premiums - Amount to whom paid - Minimum.** The commissioner shall determine the premium for a blanket bond. Each state agency and political subdivision shall pay the premium in advance to the ~~state treasurer who shall keep fund and the premiums collected must be kept in the fund. The state treasurer shall issue receipts in triplicate. The treasurer shall file one of these receipts in the treasurer's office, shall mail one to the official making the payment,~~

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<sup>114</sup> Section 26.1-21-07 was also amended by section 1 of Senate Bill No. 2300, chapter 249.

~~and shall mail one to the commissioner.~~ The minimum premium for each bond must be two dollars and fifty cents per public employee per year. Payments must be made for one year or for a longer term as prescribed by the commissioner. The premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two million dollars. The collection of premiums must be resumed on the bonds, at the rates provided under this section, whenever the reserve fund is depleted below the sum of two million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two million dollars.

**SECTION 4. AMENDMENT.** Section 26.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-10. Automatic insurance of state and political subdivisions.**

1. Each state agency and each political subdivision shall apply to be bonded in the fund no less often than on a biennial basis or if when a change in coverage is requested, whichever occurs first. Unless an application is denied within sixty days from the date it is received by the commissioner, the application will be deemed approved and bond coverage in force. If a bond is in the discretion of the state agency or political subdivision and a bond is not requested, the state agency or political subdivision is exempt from this section.
2. The application must include a requested amount of bond coverage based on the amount of money and property handled and the opportunity for defalcation and any other condition imposed by law and list twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on the total monthly balances. In addition, the application must include any information requested by the commissioner to determine the amount of money and property handled and the opportunity for defalcation, including the procedure used to determine the amount of bond requested, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures.

**SECTION 5.** Section 26.1-21-24 of the North Dakota Century Code is created and enacted as follows:

**26.1-21-24. State agency or political subdivision may purchase bond in addition to fund bond.** Nothing in this chapter prohibits a state agency or political subdivision from purchasing a bond issued by a duly authorized surety company in addition to the bond provided by the fund. A state agency or political subdivision that purchases an additional bond shall file evidence of that bond with the commissioner.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 249****SENATE BILL NO. 2300**

(Senators Olafson, Anderson, Andrist)  
(Representatives Belter, Headland, Kaldor)

AN ACT to amend and reenact section 26.1-21-07 of the North Dakota Century Code, relating to state bonding fund coverage.

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

<sup>115</sup> **SECTION 1. AMENDMENT.** Section 26.1-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-07. Coverage.** The amount of coverage afforded to each state agency or political subdivision must be determined by the commissioner based upon the amount of money or property handled and the opportunity for defalcation but the amount must at least equal the amount of money or property actually handled or ten thousand dollars, whichever is less. The coverage may be greater than but not less than the amount required by law or determined under law for a position. The coverage for a state legislative or judicial branch agency, however, may be determined by the legislative council or supreme court, respectively.

Approved April 9, 2009  
Filed April 13, 2009

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<sup>115</sup> Section 26.1-21-07 was also amended by section 2 of House Bill No. 1294, chapter 248.

**CHAPTER 250****SENATE BILL NO. 2144**

(Political Subdivisions Committee)  
(At the request of the State Auditor)

AN ACT to amend and reenact section 26.1-21-12 of the North Dakota Century Code, relating to claims against the bonding fund.

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

**SECTION 1. AMENDMENT.** Section 26.1-21-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-12. Commissioner to notify state auditor of default of public employee or public official - Duty of state auditor.** If any public employee or public official defaults or creates a liability against the fund, the commissioner shall notify the state auditor. The state auditor ~~immediately~~ shall investigate, or cause to be investigated, the accounts of the public employee or public official and file a report with the commissioner stating any amount due from the fund because of the default or wrongful act. For these services, the auditor or investigating firm must be paid out of the fund ~~the same fees as the auditor is paid for auditing the accounts of county officers~~ all reasonable costs incurred.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 251****SENATE BILL NO. 2109**

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

AN ACT to amend and reenact section 26.1-25.1-07 of the North Dakota Century Code, relating to insurance credit scores.

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

**SECTION 1. AMENDMENT.** Section 26.1-25.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-25.1-07. Filing.**

1. An insurer that uses insurance scores to underwrite or rate risks shall file the insurer's scoring models or other scoring processes with the insurance department. A third party may file scoring models on behalf of an insurer. A filing that includes insurance scoring must include loss experience justifying the use of credit information.
2. Any filing relating to credit scoring models, scoring processes, and information related to scoring models or processes filed by or on behalf of an insurer pursuant to subsection 1 is considered a trade secret under chapter 47-25-1.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 252

### HOUSE BILL NO. 1192

(Representative Wald)

(At the request of the Insurance Commissioner)

AN ACT to create and enact a new subsection to section 26.1-01-07 and a new section to chapter 26.1-26 of the North Dakota Century Code, relating to fees charged for insurance producer license continuation; to amend and reenact sections 26.1-26-20, 26.1-26-31, 26.1-26-31.1, and 26.1-26-50 of the North Dakota Century Code, relating to insurance producer continuing education requirements and penalties; to repeal sections 26.1-26-31.4 and 26.1-26-31.8 of the North Dakota Century Code, relating to insurance producer continuing education requirements; to provide a penalty; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>116</sup> **SECTION 1.** A new subsection to section 26.1-01-07 of the North Dakota Century Code is created and enacted as follows:

For filing an individual insurance producer licensing continuation, twenty-five dollars.

**SECTION 2.** A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

**Biennial license continuation.** A licensed individual insurance producer shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee of twenty-five dollars. The commissioner shall give a licensee not less than sixty days' notice of the biennial license continuation filing deadline.

**SECTION 3. AMENDMENT.** Section 26.1-26-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-26-20. Nonresident licensing.**

1. Unless denied licensure pursuant to this chapter, the commissioner shall issue a nonresident person a nonresident insurance producer license if:
  - a. The person is currently licensed as a resident and is in good standing in the person's home state;
  - b. The person has submitted the proper request for licensure and has paid the fees required by section 26.1-01-07;

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<sup>116</sup> Section 26.1-01-07 was also amended by section 1 of House Bill No. 1136, chapter 242, and section 1 of House Bill No. 1141, chapter 243.

- c. The person has submitted or transmitted to the commissioner either the person's home state application for licensure or a completed uniform application; and
  - d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.
2. The commissioner may verify the insurance producer's licensing status through the insurance producer data base maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.
3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. A fee or license application is not required.
4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in the person's home state is entitled to receive a nonresident surplus lines insurance producer license pursuant to subsection 1. Except as to subsection 1, nothing in this section otherwise amends or supersedes any provision of chapter 26.1-44.
5. Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 26.1-26-11.
- ~~6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars.~~

**SECTION 4. AMENDMENT.** Section 26.1-26-31 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-31. Term of license.** A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a business entity, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. The individual resident licensee fails to comply with continuing education requirements of this chapter;

6. The individual licensee fails to file the biennial continuation and pay the fee;
7. The surplus lines insurance producer has failed to maintain a resident or nonresident license as an insurance producer as required by section 26.1-26-17, or has failed to pay the annual renewal fee to the commissioner; or
- 6- 8. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

<sup>117</sup> **SECTION 5. AMENDMENT.** Section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-31.1. Continuing education required - ~~Exceptions~~ Exception.**

1. Except as otherwise provided in this chapter, any ~~person~~ individual licensed as ~~an a resident~~ insurance producer or resident insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the ~~person~~ individual attended or participated in continuing education of not less than twenty-four hours of approved coursework, of which three hours must be in ethics. The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any ~~person~~ individual having a license limited to a specific product type. Credit for courses attended in any one year over the minimum number of hours of coursework required, not to exceed twelve hours, may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of ~~each a two-year period following licensure.~~ The commissioner may provide a one-time extension of the two-year reporting requirement, not to exceed thirty-six months, if additional time is necessary in order to implement the transition to reporting continuing education by birth month. No continuing education is required of an insurance producer who is at least sixty-two years of age and who has a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five.
2. The commissioner shall by rule ~~divide the persons subject to this section into two equal segments for the purpose of reporting, as follows:~~
  - a. ~~One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.~~
  - b. ~~One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every even-numbered year.~~

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<sup>117</sup> Section 26.1-26-31.1 was also amended by section 1 of House Bill No. 1142, chapter 253.

3. All persons licensed after January 1, 1989, shall report within thirty days of the first day of January of the year following the second anniversary of the person's licensure provide for reporting by birth month of compliance with the continuing education requirements of this section.

**SECTION 6. AMENDMENT.** Section 26.1-26-50 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-50. Civil penalty for violation of chapter.** In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine ~~of not less than one hundred dollars nor more than one~~ not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

**SECTION 7. REPEAL.** Sections 26.1-26-31.4 and 26.1-26-31.8 of the North Dakota Century Code are repealed.

**SECTION 8. EFFECTIVE DATE.** This Act becomes effective on January 1, 2010.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 253****HOUSE BILL NO. 1142**

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

AN ACT to amend and reenact subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code, relating to insurance producer continuing education requirements.

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

<sup>118</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, any person licensed as an insurance producer or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than twenty-four hours of approved coursework, of which three hours must be in ethics. The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any person having a license limited to a specific product type. Credit for courses attended in any one year over the minimum number of hours of coursework required, not to exceed twelve hours, may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each two-year period following licensure. No continuing education is required of an insurance producer who, as of January 1, 2010, is at least sixty-two years of age and who has a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>118</sup> Section 26.1-26-31.1 was also amended by section 5 of House Bill No. 1192, chapter 252.

**CHAPTER 254****HOUSE BILL NO. 1284**

(Representatives Keiser, Wald)  
(Senator Klein)

AN ACT to create and enact chapter 26.1-33.4 of the North Dakota Century Code, relating to the national conference of insurance legislators Life Settlements Model Act; to amend and reenact subsections 19 and 21 of section 10-04-02 of the North Dakota Century Code, relating to the definition of the terms viatical or life settlement contract and security; to repeal chapter 26.1-33.3 of the North Dakota Century Code, relating to viatical settlement contracts; and to provide a penalty.

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

<sup>119</sup> **SECTION 1. AMENDMENT.** Subsections 19 and 21 of section 10-04-02 of the North Dakota Century Code are amended and reenacted as follows:

19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical or life settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.
21. "Viatical or life settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical or life settlement contract" does not include:

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<sup>119</sup> Section 10-04-02 was also amended by section 1 of House Bill No. 1100, chapter 107.

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the ~~veteran~~ owner to the ~~veteran~~ ~~settlement~~ provider pursuant to chapter ~~26.1-33.3~~ 26.1-33.4;
- b. The assignment of a life insurance policy to a bank or depository institution; or
- c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

**SECTION 2.** Chapter 26.1-33.4 of the North Dakota Century Code is created and enacted as follows:

**26.1-33.4-01. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio; television; the internet; or similar communications media, including filmstrips, motion pictures, and videos; published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
2. "Broker" means an individual who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. The term does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in that individual's professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.
3. "Business of life settlements" includes an activity involved in offering to enter, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement contracts.
4. "Chronically ill" means:
  - a. Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;
  - b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
  - c. Having a level of disability similar to that described in subdivision a as determined by the United States secretary of health and human services.

5. "Financing entity" means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies, and who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts. The term does not include a nonaccredited investor or purchaser.
6. "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity, including any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.
7. "Fraudulent life settlement act" includes:
  - a. Any act or omission committed by any person that, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits the person's employees or agents to engage in acts, including:
    - (1) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
      - (a) An application for the issuance of a life settlement contract or insurance policy;
      - (b) The underwriting of a life settlement contract or insurance policy;
      - (c) A claim for payment or benefit pursuant to a life settlement contract or insurance policy;
      - (d) Premiums paid on an insurance policy;
      - (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;
      - (f) The reinstatement or conversion of an insurance policy;
      - (g) In the solicitation, offer to enter, or effectuation of a life settlement contract or insurance policy;
      - (h) The issuance of written evidence of life settlement contracts or insurance;



- (7) Attempt to commit, assist, aid, or abet in the commission of or conspiracy to commit the acts or omissions specified in this subsection; or
- (8) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.
8. "Insured" means the individual covered under the policy being considered for sale in a life settlement contract.
9. "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.
10. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer that has received qualification or authority for life insurance coverage or a life line of coverage pursuant to chapter 26.1-26.
11. "Life settlement contract" means a written agreement entered between a provider, or any affiliate of the provider, and an owner establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of an insurance policy or certificate of insurance for compensation; provided, however, that the minimum value for a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. The term includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of an individual residing in this state.
- a. "Life settlement contract" also includes:
- (1) A written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or
- (2) A premium finance loan made for a policy on or before the date of issuance of the policy when:
- (a) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
- (b) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

- (c) The owner agrees on the date of the premium finance loan to sell the policy or any portion of the policy's death benefit on any date following the issuance of the policy.
- b. "Life settlement contract" does not include:
- (1) A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death benefits provisions contained in the life insurance policy, whether issued with the original policy or as a rider;
  - (2) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;
  - (3) A collateral assignment of a life insurance policy by an owner;
  - (4) A loan made by a lender that does not violate chapter 26.1-20.1, provided the loan is not described in paragraph 1, and is not otherwise within the definition of life settlement contract;
  - (5) An agreement where all the parties:
    - (a) Are closely related to the insured by blood or law; or
    - (b) Have a lawful substantial economic interest in the continued life, health, and bodily safety of the individual insured, or are trusts established primarily for the benefit of such parties;
  - (6) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
  - (7) A bona fide business succession planning arrangement:
    - (a) Between one or more shareholders in a corporation or between a corporation and one or more of the corporation's shareholders or one or more trusts established by the corporation's shareholders;
    - (b) Between one or more partners in a partnership or between a partnership and one or more of the partnership's partners or one or more trusts established by the partnership's partners; or
    - (c) Between one or more members in a limited liability company or between a limited liability company and one or more of the limited liability company's members

or one or more trusts established by the limited liability company's members;

- (8) An agreement entered by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (9) Any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this chapter.
12. "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debt or lien.
13. "Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter a life settlement contract. For the purposes of this definition, an owner is not limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. The term does not include:
- a. Any provider or other licensee under this chapter;
  - b. A qualified institutional buyer as defined in rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.];
  - c. A financing entity;
  - d. A special purpose entity; or
  - e. A related provider trust.
14. "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.
15. "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.
16. "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
17. "Provider" means a person, other than an owner, that enters or effectuates a life settlement contract with an owner. The term does not include:
- a. Any bank, savings bank, savings and loan association, or credit union;

- b. A licensed lending institution, creditor, or secured party pursuant to a premium finance loan agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan;
  - c. The insurer of a life insurance policy or rider to the extent of providing accelerated death benefits or riders or cash surrender value;
  - d. Any individual who enters or effectuates no more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy;
  - e. A purchaser;
  - f. Any authorized or eligible insurer that provides stop-loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;
  - g. A financing entity;
  - h. A special purpose entity;
  - i. A related provider trust;
  - j. A broker; or
  - k. An accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], that purchases a life settlement policy from a provider.
18. "Purchased policy" means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract.
19. "Purchaser" means a person that pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.
20. "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the insurance department as if those records and files were maintained directly by the licensed provider.

21. "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.
22. "Special purpose entity" means an organization formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider; or in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in rule 144 promulgated under the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.]; or the securities pay a fixed rate of return commensurate with established a set-backed institutional capital markets.
23. "Stranger-originated life insurance" is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that at the time of policy inception could not lawfully initiate the policy on its own, and where at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subdivision b of subsection 11.
24. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

#### **26.1-33.4-02. Licensing and bonding requirements.**

1. A person, wherever located, may not act as a provider or broker with an owner or multiple owners who is a resident of this state without first having obtained a license from the commissioner. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract must be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.
2. Application for a provider or broker license must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee in an amount established by the commissioner; provided, however, that the license and renewal fees for a provider license must be reasonable and that the license and renewal fees for a broker license may not exceed those established for an insurance producer, as such fees are otherwise provided for in this title.
3. A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the producer's home state for at least one year and is licensed as a nonresident producer in this state is deemed to meet the licensing requirements of this section and must be permitted to operate as a broker.

4. Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that the broker is acting as a broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification must include an acknowledgement by the life insurance producer that the broker will operate as a broker in accordance with this chapter.
5. The insurer that issued the policy that is the subject of a life settlement contract may not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.
6. An individual licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.
7. Licenses may be renewed annually on the anniversary date upon payment of the periodic renewal fee. As specified in subsection 2, the renewal fee for a provider may not exceed a reasonable fee. Failure to pay the fee within the terms prescribed results in the automatic revocation of the license requiring periodic renewal.
8. The term of provider license must be equal to that of a domestic stock life insurance company and the term of a broker license must be equal to that of an insurance producer license. Licenses requiring periodic renewal may be renewed on their anniversary date upon payment of the periodic renewal fee as specified in subsection 2. Failure to pay the fees before the expiration of the renewal date results in expiration of the license.
9. The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner. The commissioner, at any time, may require the applicant to fully disclose the identity of the applicant's stockholders (except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded), partners, officers, and employees, and the commissioner may refuse to issue the license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.
10. A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those individuals are named in the application and any supplements to the application.
11. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:
  - a. If a provider, has provided a detailed plan of operation;

- b. Is competent and trustworthy and intends to transact the applicant's business in good faith;
  - c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;
  - d. If the applicant is a legal entity, is formed or organized pursuant to the laws of this state, or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile;
  - e. Has provided to the commissioner an antifraud plan that meets the requirements of section 26.1-33.4-12 and includes:
    - (1) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;
    - (2) A description of the procedures for reporting fraudulent insurance acts to the commissioner;
    - (3) A description of the plan for antifraud education and training of the applicant's underwriters and other personnel; and
    - (4) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications; and
  - f. If a provider or broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or through a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars. The commissioner shall accept, as evidence of financial responsibility under this subdivision, proof that financial instruments in accordance with the requirements in this subdivision have been filed with one or more states in which the applicant is licensed as a provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner determines necessary. Any surety bond issued pursuant to this subdivision must specifically authorize recovery by the commissioner on behalf of any person in this state which sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the provider or broker.
12. The commissioner may not issue any license to any nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

13. Each licensee shall file with the commissioner before March first of each year an annual statement containing such information as the commissioner by rule may prescribe.
14. A provider may not use any person to perform the functions of a broker, as provided under this chapter, unless the person holds a current, valid license as a broker, and as provided in this section.
15. A broker may not use any person to perform the functions of a provider as defined in this chapter unless such person holds a current, valid license as a provider and as provided in this section.
16. A provider or broker shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members, or designated employees within thirty days of the change.
17. An individual licensed as a broker shall complete on a biennial basis fifteen hours of training related to life settlements and life settlement transactions as required by the commissioner; provided, however, that a life insurance producer who is operating as a broker pursuant to this section is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

**26.1-33.4-03. License suspension, revocation, or refusal to renew.**

1. The commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:
  - a. There was any material misrepresentation in the application for the license;
  - b. The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
  - c. The provider demonstrates a pattern of unreasonably withholding payments to policyowners;
  - d. The licensee no longer meets the requirements for initial licensure;
  - e. The licensee or any officer, partner, member, or director has been convicted of a felony or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;
  - f. The provider has entered any life settlement contract that has not been approved pursuant to this chapter;
  - g. The provider has failed to honor contractual obligations set out in a life settlement contract;

- h. The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], financing entity, special purpose entity, or related provider trust; or
  - i. The licensee or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter.
- 2. The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.
- 3. Before the commissioner denies a license application or suspends, revokes, or refuses to renew the license of any licensee under this chapter, the commissioner shall conduct a hearing.

#### **26.1-33.4-04. Contract requirements.**

- 1. A person may not use any form of life settlement contract in this state unless the contract has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.
- 2. An insurer may not require, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.
- 3. A person may not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 26.1-33.4-07, 26.1-33.4-08, and 26.1-33.4-10 and subsection 2 of section 26.1-33.4-14 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. The commissioner may require the submission of advertising material.

#### **26.1-33.4-05. Reporting requirements and privacy.**

- 1. For any policy settled within five years of policy issuance, each provider shall file with the commissioner before March first of each year an annual statement containing such information as the commissioner may prescribe by regulation. In addition to any other requirements, the annual statement must specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement also must

include the names of the insurance companies whose policies have been settled and the brokers that have settled said policies.

- a. Such information must be limited to only those transactions where the insured is a resident of this state and may not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.
  - b. Every provider that willfully fails to file an annual statement as required in this section, or willfully fails to reply within thirty days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to two hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.
2. Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, may not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:
- a. Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;
  - b. Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided the sale is conducted in accordance with applicable state and federal securities law, and provided further that the owner and the insured have both provided prior written consent to the disclosure;
  - c. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of section 26.1-33.4-12;
  - d. Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall comply with the confidentiality requirements of subsection 2 of section 26.1-33.4-05;
  - e. Is necessary to allow the provider or broker or its authorized representative to make contacts for the purpose of determining health status. For the purposes of this section, the term "authorized representative" does not include any person that has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity; further, a provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or
  - f. Is required to purchase stop-loss coverage.

3. Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract is subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley Act [Pub. L. 106-102] and all other state and federal laws relating to confidentiality of nonpublic personal information.

#### **26.1-33.4-06. Examination.**

1. The commissioner, when the commissioner deems it reasonably necessary to protect the interests of the public, may examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination must be paid by the licensee or applicant.
2. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.
3. Names of and individual identification data for all owners and insureds must be considered private and confidential information and may not be disclosed by the commissioner unless required by law.
4. Records of all consummated transactions and life settlement contracts must be maintained by the provider for three years after the death of the insured and must be available to the commissioner for inspection during reasonable business hours.
5.
  - a. Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing the examiners as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and should use those guidelines and procedures set forth in an examiners' handbook adopted by a national organization.
  - b. Every licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner is grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's

jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority must be conducted pursuant to section 26.1-01-03.1.

- c. The commissioner may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.
- d. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which must be borne by the licensee that is the subject of the examination.
- e. This chapter does not limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.
- f. This chapter does not limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner determines appropriate.
- 6. a. Examination reports must be composed of only facts appearing upon the books, from the testimony of its officers or agents, or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

b. No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.

c. If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.
- 7. a. Names and individual identification data for all owners, purchasers, and insureds must be considered private and confidential

information and may not be disclosed by the commissioner, unless the disclosure is to another regulator, is required under law, or is allowed under section 26.1-03-19.4.

- b. Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee must be confidential by law and privileged, is not subject to the state's open records laws, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.
- 8. a. An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section may not be construed to automatically preclude an examiner from being:

  - (1) An owner;
  - (2) An insured in a life settlement contract or insurance policy; or
  - (3) A beneficiary in an insurance policy that is proposed for a life settlement contract.
- b. Notwithstanding the requirements of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.
- 9. a. No cause of action arises nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out this chapter.
- b. No cause of action arises, nor may any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way



- d. The fact that receipt of proceeds from a life settlement contract may adversely affect the recipient's eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies.
- e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.
- f. The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract.
- g. The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist under the policy or certificate of a group policy to be forfeited by the owner and that assistance should be sought from a professional financial adviser.
- h. The amount and method of calculating the compensation paid or to be paid to the broker, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given.
- i. The date by which the funds will be available to the owner and the transmitter of the funds.
- j. The fact that the commissioner shall require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process.
- k. The disclosure document must contain the following language:

All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or

provides funds for the purchase. You may be asked to renew your permission to share information every two years.

- l. The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts the following statement:

Any person that knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

- m. The fact that the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. This contact may be made only by a provider or broker licensed in the state in which the owner resided at the time of the settlement or by the authorized representative of such a provider or broker.
- n. The affiliation, if any, between the provider and the issuer of the insurance policy to be settled.
- o. That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.
- p. The document must include the name, address, and telephone number of the provider.
- q. The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
- r. The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.
- s. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, that the owner must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed settlement.
- t. The dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider also shall disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and

dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the viatical settlement contract.

- u. Any affiliations or contractual arrangements between the provider and the purchaser.
2. The written disclosures must be conspicuously displayed in any life settlement contract furnished to the owner by a provider, including any affiliations or contractual arrangements between the provider and the broker.
  3. A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:
    - a. The name, business address, and telephone number of the broker.
    - b. A full, complete, and accurate description of all the offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract.
    - c. A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts.
    - d. The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract.
    - e. A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.
    - f. The failure to provide the disclosures or rights described in this section is deemed an unfair trade practice pursuant to section 26.1-33.4-16.

**26.1-33.4-09. Disclosure to insurer.** Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

1. If, as described in subsection 11 of section 26.1-33.4-01, the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application must be

rejected as a violation of the prohibited practices in section 26.1-33.4-12.

2. If the financing does not violate section 26.1-33.4-12 in this manner, the insurance carrier:

a. May make disclosures, such as the following, to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy: "If you have entered a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(1) A change of ownership could lead to a stranger owning an interest in the insured's life;

(2) A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(3) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and other factors may reduce the ability to obtain coverage and may result in significantly higher premiums; and

(4) You should consult a professional adviser, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan;" and

b. May require certifications, such as the following, from the applicant or the insured or both:

I have entered into any agreement or arrangement providing for the future sale of this life insurance policy;

My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and

The borrower has an insurable interest in the insured.

**26.1-33.4-10. General rules.**

1. A provider entering a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, first shall obtain:

a. If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no

- constraint or undue influence to enter into a settlement contract; and
- b. A document in which the insured consents to the release of the insured's medical records to a provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.
2. The insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance producer not later than thirty calendar days from the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.
3. Before or at the time of execution of the settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract, that the owner has a full and complete understanding of the benefits of the policy, acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.
4. The insurer may not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered in this state or with a resident of this state.
5. If a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.
6. If a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of subsection 1 of section 26.1-33.4-08.
7. Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice must be accompanied by the documents required by subdivision b of subsection 1 of section 26.1-33.4-09.
8. All medical information solicited or obtained by any licensee must be subject to the applicable provision of state law relating to confidentiality of medical information if not otherwise provided in this chapter.
9. All life settlement contracts entered in this state must provide the owner with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed

by all parties or thirty calendar days after the life settlement proceeds have been sent to the escrow agent by or on behalf of the provider as provided in subsection 11. Rescission by the owner may be conditioned upon the owner giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the provider or purchaser, within sixty calendar days of the death of the insured. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund all the commissions and compensation to the provider within five business days following receipt of written demand from the provider, which demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

10. Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent must be required to transfer the proceeds due to the owner within three business days of the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company.
11. Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission tolls the right of rescission until sixty days after the written notice of the right of rescission has been given.
12. Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract must be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing such broker's fee below this percentage if the broker so chooses.
13. The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.
14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider

or the provider otherwise conclusively shows that one or more of the following conditions have been met within the five-year period:

- a. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:
    - (1) The owner or insured is terminally or chronically ill;
    - (2) The owner's spouse died or no remaining beneficiaries are then surviving;
    - (3) The owner retired from full-time employment; or
    - (4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;
  - c. A final order, judgment, or decree has been entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner in default, bankrupt, or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets; or
  - d. The owner entered a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times before the date that is two years after policy issuance, the following conditions are met:
    - (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 5 of subdivision b of subsection 11 of section 26.1-33.4-01;
    - (2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
    - (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.
15. Copies of the independent evidence described in subdivision b of subsection 14 and documents required by subsection 1, 2, 3, or 7 must

be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.

16. If the provider submits to the insurer a copy of the owner's or insured's certification described in and the independent evidence required by subdivision b of subsection 14 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the provider, the copy is deemed to establish conclusively that the life settlement contract satisfies the requirements of this section and the insurer timely shall respond to the request.

**26.1-33.4-11. Authority to adopt regulations - Conflict of laws.**

1. The commissioner may adopt rules implementing this chapter and regulating the activities and relationships of providers, brokers, and insurers and their agents.
2. The commissioner may establish standards for evaluating reasonableness of a payment under a life settlement contract for an individual who is terminally or chronically ill. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of an individual who is chronically or terminally ill.
3. The commissioner may establish appropriate licensing requirements, fees, and standards for continued licensure for providers and brokers.
4.
  - a. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract must be governed by the law of the state in which the owner having the largest percentage ownership resides, or if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.
  - b. A provider from this state who enters a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts is governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which the owner is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the commissioner.
  - c. If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

**26.1-33.4-12. Prohibited practices.**

1. It is unlawful for any person to:
  - a. Enter a life settlement contract if such person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for such policy;
  - b. Engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;
  - c. Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;
  - d. Issue, solicit, market, or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy;
  - e. Enter a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement must be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of the overpayment;
  - f. With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker;
  - g. With respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract;
  - h. With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event may any marketing materials expressly reference that the insurance is "free" for any period of

time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time must be considered a violation of this chapter; or

- i. With respect to any life insurance producer, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

2. A violation of this section is deemed a fraudulent life settlement act.

### **26.1-33.4-13. Fraud prevention and control.**

1. a. A person may not commit a fraudulent life settlement act.
  - b. A person may not knowingly and intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
  - c. A person in the business of life settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

2. a. Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, must contain the following statement or a substantially similar statement:

Any person that knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

- b. The lack of a statement as required in subdivision a does not constitute a defense in any prosecution for a fraudulent life settlement act.
3. a. Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by and in a manner prescribed by the commissioner.
    - b. Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by and in a manner prescribed by the commissioner.
4. a. Civil liability may not be imposed on and no cause of action may arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:





- (d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- b. Antifraud plans submitted to the commissioner are privileged and confidential and are not a public record and may not be subject to discovery or subpoena in a civil or criminal action.

#### **26.1-33.4-14. Injunctions - Civil remedies - Cease and desist.**

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction in the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.
2. Any person damaged by the acts of another person in violation of this chapter or any rule or regulation implementing this chapter may bring a civil action for damages against the person committing the violation in a court of competent jurisdiction.
3. The commissioner may issue a cease and desist order upon a person that violates any provision of this part, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner in accordance with chapter 28-32.
4. When the commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease and desist proceedings under subsection 1, the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to chapter 28-32. In the event of a willful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. A choice of law provision may not be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a resident of this state.

#### **26.1-33.4-15. Penalties.**

1. It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.
2. For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud.

3. The commissioner may levy a civil penalty not exceeding fifty thousand dollars per violation and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have committed a fraudulent life settlement act or violated any other provision of this chapter.
4. The license of a person licensed under this chapter which commits a fraudulent life settlement act must be revoked.

**26.1-33.4-16. Unfair trade practices.** A violation of this chapter is considered an unfair trade practice pursuant to state law and subject to the penalties provided by state law.

**SECTION 3. REPEAL.** Chapter 26.1-33.3 of the North Dakota Century Code is repealed.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 255****SENATE BILL NO. 2380**

(Senator Klein)

(Representative Kasper)

AN ACT to create and enact a new subsection to section 26.1-34.2-03 of the North Dakota Century Code, relating to annuity transactions; and to amend and reenact subsection 5 of section 26.1-34.2-03 of the North Dakota Century Code, relating to registered annuities.

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

<sup>120</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 26.1-34.2-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Compliance with the ~~national association of securities dealers~~ financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of ~~variable annuities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.]~~ or rules or regulations adopted under that act. However, nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter.

<sup>121</sup> **SECTION 2.** A new subsection to section 26.1-34.2-03 of the North Dakota Century Code is created and enacted as follows:

This chapter does not preempt, supersede, or limit any provision of any securities law of this state or any rule, order, or notice issued thereunder.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>120</sup> Section 26.1-34.2-03 was also amended by section 2 of Senate Bill No. 2380, chapter 255.

<sup>121</sup> Section 26.1-34.2-03 was also amended by section 1 of Senate Bill No. 2380, chapter 255.

**CHAPTER 256****HOUSE BILL NO. 1204**

(Representatives Keiser, Klemin, Weisz)  
(Senator J. Lee)

AN ACT to create and enact subsection 15 to section 26.1-36-05, a new section to chapter 26.1-36, and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health insurance coverage for medical services related to intoxication; to amend and reenact subsection 2 of section 26.1-36-04 of the North Dakota Century Code, relating to individual health insurance coverage of injuries caused by intoxication or the use of narcotics or incurred in the commission of a crime; and to provide a statement of legislative intent.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, ~~no~~ an accident and health insurance policy delivered or issued for delivery to any person in this state may not contain provisions respecting the matters described in this subsection unless the provisions in the policy are not less favorable in any respect to the insured or the beneficiary.
  - a. A provision that if the insured is injured or contracts sickness after having changed occupation to one classified by the insurer as more hazardous than that stated in the policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon receipt of proof of the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of proof, whichever is the more recent. The provision must provide that the classification of occupational risk and the premium rates will be such as have been last filed by the insurer ~~prior to~~ before the occurrence of the loss for which the insurer is liable or ~~prior to~~ before date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time the policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates will be those last made effective by the insurer in such state ~~prior to~~ before the occurrence of the loss or ~~prior to~~ before the date of proof of change in occupation.

- b. A provision that if the age of the insured has been misstated, all amounts payable under the policy will be such as the premium paid would have purchased at the correct age.
- c. A provision that if an accident or health or accident and health policy or policies previously issued by the insurer to the insured are in force concurrently therewith, making the aggregate indemnity for the type of coverage or coverages, in excess of the maximum limit of indemnity or indemnities, the excess insurance is void and all premiums paid for the excess will be returned to the insured or to the insured's estate. In lieu of this type of provision, the policy may provide that insurance effective at any one time on the insured under the policy and a like policy or policies in the insurer is limited to the one such policy elected by the insured, the insured's beneficiary, or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies.
- d. A provision that upon the payment of a claim under the policy, any premium then due and unpaid or covered by any note or written order may be deducted ~~therefrom~~ from the payment.
- e. Subject to chapter 26.1-36.4, a provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.
- f. A provision that any provision of the policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is amended to conform to the minimum requirements of such statutes.
- g. A provision that the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.
- h. ~~A provision that the insurer is not liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.~~
- i. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided

below under this subdivision, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percentage of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percentage of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percentage provided.

- (1) The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as ~~(4)~~ (a) the product of the insured's earned income and the original percent, or, if higher, the alternative percentage, bears to ~~(2)~~ (b) the total amount of loss-of-time benefits payable for such month under the policy and all other valid loss-of-time coverage on the insured, without giving effect to the "overinsurance provision" in this or any other coverage, less in both ~~(4)~~ (a) and ~~(2)~~ (b) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision".
- (2) The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable.
- (3) The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (4) The provision must provide that:
  - (a) "Earned income", except when otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment

income or any other income not derived from the insured's vocational activities.

- (2) (b) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.
- (5) This type of provision may be included only in a policy ~~which~~ that provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workforce safety and insurance or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved.

**SECTION 2.** Subsection 15 to section 26.1-36-05 of the North Dakota Century Code is created and enacted as follows:

15. A provision that except as otherwise provided under this subsection, the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a crime or to which a contributing cause was the insured's engagement in an illegal occupation. However, under this subsection the insurer is liable for a loss to the extent the crime committed was a misdemeanor violation of section 39-08-01.

**SECTION 3.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

**Medical services related to intoxication.** An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver,

issue, execute, or renew any major medical expense policy on a group, individual, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any individual covered under the policy or contract for injury or illness resulting from any loss sustained or contracted in the consequence of the insured's being intoxicated or under the influence of any narcotic. The coverage required under this section may be subject to limitations under subdivision g of subsection 2 of section 26.1-36-04 or subsection 15 of section 26.1-36-05.

**SECTION 4.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Insurance to cover medical services related to intoxication.** The board shall provide medical benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52-04.2 for medical services related to intoxication in the same manner as provided for under subsection 15 of section 26.1-36-05 and section 3 of this Act.

**SECTION 5. LEGISLATIVE INTENT.** This Act is not a mandate of health insurance coverage of services under section 54-03-28.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 257****SENATE BILL NO. 2274**  
(Senators J. Lee, Heckaman, Klein)  
(Representatives Keiser, Thorpe, Weisz)

AN ACT to amend and reenact section 26.1-36-44 of the North Dakota Century Code, relating to health insurance independent external reviews requested by providers.

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

**SECTION 1. AMENDMENT.** Section 26.1-36-44 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-44. Independent external review.** Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party. A provider may not use an independent external review under this section unless the provider first has exhausted all internal appeal processes offered by the insurance company, nonprofit health service corporation, or health maintenance organization.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 258

### HOUSE BILL NO. 1196 (Representatives Berg, Clark, Vigesaa) (Senators Behm, Klein, Wanzek)

AN ACT to amend and reenact section 26.1-36.4-06 of the North Dakota Century Code, relating to elimination of the reporting requirement of modified community rating of insurance policies.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>122</sup> **SECTION 1. AMENDMENT.** Section 26.1-36.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36.4-06. Modified community rating.** Premium rates for individual policies are subject to the following:

1. For any class of individuals, the premium rates charged during a rating period to the individuals in that class for the same or similar coverage may not vary by a ratio of more than six to one after August 1, 1995, and by a ratio of more than five to one after August 1, 1996, when age, industry, gender, and duration of coverage of the individuals are considered. Gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.
2. An insurer, in addition to the factors set forth in subsection 1, may use geography, family composition, healthy lifestyles, and benefit variations to determine premium rates.
3. The commissioner shall design and adopt reporting forms to be used by an insurer to report information as to insurer's experience as to insurance provided under this chapter on a periodic basis to determine the impact of the reforms and implementation of modified community rating contained in this chapter ~~and the commissioner shall report to the legislative assembly or a committee designated by the legislative council the findings of the commissioner.~~

Approved April 8, 2009  
Filed April 9, 2009

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<sup>122</sup> Section 26.1-36.4-06 was also amended by section 19 of House Bill No. 1436, chapter 482.

**CHAPTER 259****HOUSE BILL NO. 1158**

(Judiciary Committee)

(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-40-18 of the North Dakota Century Code, relating to automobile warranty contracts, automobile mechanical breakdown contracts, and automobile service contracts.

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

**SECTION 1. AMENDMENT.** Section 26.1-40-18 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-40-18. Automobile warranties construed.**

1. ~~An automobile dealer or a third-party administrator~~ A person who issues ~~an a written~~ automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the ~~dealer's or administrator's~~ person's contractual obligation.
2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
  - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
  - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.
3. This section does not apply to an original equipment manufacturer.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 260

### HOUSE BILL NO. 1245 (Representatives Ruby, Keiser, Nathe) (Senators Dever, Hogue, Miller)

AN ACT to amend and reenact section 26.1-41-03 of the North Dakota Century Code, relating to eliminating the need for a written request to suspend automobile coverage.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 26.1-41-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-41-03. Suspension of coverage - ~~Written request~~ Request by owner.** Upon receipt notice from the owner of a secured motor vehicle of a signed ~~written request for suspension~~ stating that the secured motor vehicle will not be operated on public roads or highways during a period of not less than thirty consecutive days, the basic no-fault insurer of the vehicle shall suspend on a pro rata basis or shall offer a similar credit, to the extent requested by the owner, insurance coverage afforded under the policy providing the security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance for the secured motor vehicle until notified ~~in writing~~ by the owner that the coverage should be reinstated. The owner may not be required to surrender the number plates during the policy suspension period. During the period of suspension, subsections 1, 2, 4, 5, 6, and 7 of section 26.1-41-02 do not apply with respect to the secured motor vehicle, but if the secured motor vehicle is operated by or with the permission of the owner during the period of suspension, subsections 1, 2, 4, 5, and 7 of section 26.1-41-02 become applicable. This section does not apply to an owner of a secured motor vehicle for which proof of financial responsibility is required under the financial responsibility laws of this state.

Approved April 8, 2009  
Filed April 9, 2009

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 261

### SENATE BILL NO. 2121

(Judiciary Committee)

(At the request of the Supreme Court)

AN ACT to provide an appropriation for defraying expenses of the judicial branch of state government related to the establishment of two additional district court judgeships; and to amend and reenact sections 27-05-01 and 27-05-02.1 of the North Dakota Century Code, relating to the number of district court judges and vacancies in judicial office.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$875,094, or so much of the sum as may be necessary, to the judicial branch for the purpose of establishing two additional district court judgeships as provided in section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 2. AMENDMENT.** Section 27-05-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-05-01. Judicial districts - Number of judges.**

4. The judicial districts in this state and the number of judges in each of the judicial districts are as designated by rule of the supreme court. The number of judges in each of the judicial districts is as follows:
  - a. The northwest judicial district shall have five judges.
  - b. The northeast judicial district shall have three judges.
  - c. The northeast central judicial district shall have four judges.
  - d. The east central judicial district shall have four judges.
  - e. The southeast judicial district shall have three judges.
  - f. The south central judicial district shall have five judges.
  - g. The southwest judicial district shall have three judges.
2. Each judicial district has that number of additional judges as designated by rule of the supreme court pursuant to subsection 3 of section 27-05-00.1. The supreme court shall reduce the number of district judges pursuant to section 27-05-02.1 to forty-two before January 2, 2004.

**SECTION 3. AMENDMENT.** Section 27-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-05-02.1. Vacancy in office of district judge - Transfer of judgeships - Abolition of offices - Hearing.**

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with the judges and attorneys in the affected judicial district, whether that office is necessary for effective judicial administration or whether a the district judgeship may be transferred to the another location to fulfill a need for judicial services. The supreme court may, consistent with that determination, order that:
  - a. The vacancy be filled in the manner provided pursuant to chapter 27-25; or
  - b. The vacant office be abolished, with or without transfer of a district judgeship as provided by subsection 5; or
  - e. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.
2. Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.
3. The authority conferred upon the supreme court in subsection 2 may be exercised:
  - a. From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;
  - b. From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and
  - e. From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than forty-two.

4. For purposes of subsection 1, a vacancy is also only deemed to have occurred in the office of district judge if the judge in the affected office declares the intention not to seek reelection or if a judge fails to timely file a petition for candidacy with the secretary of state pursuant to section 16.1-11-06. The secretary of state shall immediately notify the supreme court if a judge fails to timely file a petition. The supreme court may establish by rule procedures for providing notice of the intention not to seek reelection. The supreme court, within ninety days of receiving notice of a judge's intention not to seek reelection or within twenty-one days of receiving notice that a judge has failed to timely file a petition for candidacy, shall determine whether the office is necessary for effective judicial administration. The supreme court shall consult with the judges and attorneys of the affected judicial district in making the determination. The supreme court, consistent with that determination, may order any disposition available under subsection 1. The supreme court shall notify the secretary of state of its determination. ~~If the vacant office is abolished, an election for that office may not be held. This subsection applies to notice given by or the failure to timely file a petition for candidacy by a district judge otherwise eligible for reelection to the office of district judge or by a county judge otherwise eligible for election in 1994 to the district judgeship replacing the county judgeship.~~
- 5- 3. The supreme court may transfer a district judgeship to any location in which a judge is necessary for effective judicial administration.
- 6- 4. The supreme court shall notify the governor of its determinations made pursuant to this section.

**SECTION 4. DISTRICT JUDGES.** The appropriation provided in section 1 of this Act provides for two additional district court judges to be assigned pursuant to section 10 of article VI of the Constitution of North Dakota in the northwest and southeast judicial districts, and to be assigned to chambers by the supreme court. Within thirty days after January 1, 2010, the judgeship vacancies created by this section shall be filled in accordance with section 13 of article VI of the Constitution of North Dakota.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 262****SENATE BILL NO. 2069**  
(Senators Lyson, Warner, Nelson, J. Lee)  
(Representative Delmore)

AN ACT to amend and reenact subsection 1 of section 27-05.2-03 of the North Dakota Century Code, relating to fees collected by the clerk of district court for deposit in the civil legal services fund.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 27-05.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A clerk of the district court shall charge and collect the following fees in civil cases:
  - a. For filing a case for decision that is not a small claims action, eighty dollars.
    - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed ~~four~~ six hundred fifty thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
    - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
    - (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
  - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
  - c. For filing a small claims action in district court, ten dollars.
  - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.
  - e. For preparing, certifying, issuing, or transmitting any document, ten dollars, or a lesser fee as may be set by the state court administrator.

- f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.

Approved April 30, 2009

Filed May 1, 2009

**CHAPTER 263****HOUSE BILL NO. 1296**

(Representatives Grande, Dosch, Glassheim)  
(Senators Dotzenrod, Grindberg, Hogue)

AN ACT to amend and reenact subsection 1 of section 27-08.1-01 and section 27-08.1-03 of the North Dakota Century Code, relating to limits on small claims court actions.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 27-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, when the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed ~~five~~ ten thousand dollars.

**SECTION 2. AMENDMENT.** Section 27-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor.** No formal pleadings other than the claim affidavit and order for appearance ~~shall~~ may be required, and the hearing and disposition of actions ~~shall~~ must be informal. ~~No~~ A court reporter ~~shall~~ be ~~is~~ not required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed ~~five~~ ten thousand dollars, which must be served upon the plaintiff by a person of legal age, not a party to or interested in the action, or mailed to the plaintiff by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of ~~five~~ ten thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury ~~shall~~ is not ~~be~~ allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section 27-05.2-03 must be charged for filing the claim affidavit.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 264****SENATE BILL NO. 2120**  
(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subdivision a of subsection 2 of section 27-09.1-08 and section 29-01-06 of the North Dakota Century Code, relating to selection of jurors and defendants' rights.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 27-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. Is not a citizen of the United States and a resident of the state and county in the jury pool;

**SECTION 2. AMENDMENT.** Section 29-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-06. Rights of defendant.** In all criminal prosecutions the party accused has the right:

1. To appear and defend in person and with counsel;
2. To demand and be informed of the nature and cause of the accusation;
3. To meet the witnesses against the party face to face;
4. To have the process of the court to compel the attendance of witnesses in the party's behalf; and
5. To a speedy and public trial, and by an impartial jury ~~of~~ in the county in which the offense is alleged to have been committed or is triable, but subject to the right of the state to have a change of the place of trial for any of the causes for which the party accused may obtain the same.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 265****SENATE BILL NO. 2118**  
(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 27-09.1-14 of the North Dakota Century Code, relating to compensation of jurors.

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

**SECTION 1. AMENDMENT.** Section 27-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**27-09.1-14. Mileage and compensation of jurors.** A juror must be paid mileage at the rate provided for state employees in section 54-06-09. A juror must be compensated at the rate of ~~twenty-five dollars for the first day and~~ fifty dollars for each ~~subsequent~~ day of required attendance at sessions of the district court ~~and unless the juror is in attendance for four hours or less on the first day, in which case compensation for the first day is twenty-five dollars.~~ A juror must be compensated at the rate of ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors must be paid by the state for jurors at sessions of the district court. Jurors at coroner's inquests must be paid by the county.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 266****HOUSE BILL NO. 1207**

(Representatives Froseth, Clark, Onstad)  
(Senators Andrist, Warner)

AN ACT to create and enact a new subsection to section 6-08.1-02 and a new section to chapter 27-13 of the North Dakota Century Code, relating to an exemption to bank confidentiality requirements for attorney trust account overdrafts and to the conduct of attorneys.

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

**SECTION 1.** A new subsection to section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

**SECTION 2.** A new section to chapter 27-13 of the North Dakota Century Code is created and enacted as follows:

**Attorney for attorney fiduciary required - Exception.** An attorney who serves as a fiduciary of an estate, trust, or conservatorship must be represented by another attorney. The attorney who serves as fiduciary or the attorney's law firm may not serve as attorney for the fiduciary. This section does not apply to United States bankruptcy court proceedings or to matters in which the decedent, trustor, beneficiary, or protected individual is a spouse, child, grandchild, parent, grandparent, or sibling of the attorney serving as a fiduciary.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 267****HOUSE BILL NO. 1094**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 15 of section 27-20-02, sections 27-20-32.2 and 27-20-38, and subsection 5 of section 50-11-00.1 of the North Dakota Century Code, relating to placement of siblings in foster care and a guardian's duty to exercise due diligence.

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

**SECTION 1. AMENDMENT.** Subsection 15 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
  - a. Whether and, if applicable, when the child will be returned to the parent;
  - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
  - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
  - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
  - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;
  - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
  - e- g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether out-of-state placements have been considered. If

the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and

- f. h. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

**SECTION 2. AMENDMENT.** Section 27-20-32.2 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-32.2. Reasonable efforts to prevent removal or to reunify - When required.**

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal ~~and~~, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve ~~and~~ families, reunify families, and maintain family connections:
  - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; ~~and~~
  - b. To make it possible for a child to return safely to the child's home;
  - c. To place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
  - d. In the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
  - a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or

- b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

**SECTION 3. AMENDMENT.** Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-38. Rights and duties of legal custodian.** A custodian to whom legal custody has been given by the court under this chapter has ~~the~~:

1. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose. ~~The custodian also has the~~
2. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
3. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child, to exercise due diligence to identify and provide notice to all parents, grandparents, and any other adult relative suggested by the parents and grandparents, subject to exceptions due to family or domestic violence, that:
  - a. Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
  - b. Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
  - c. Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and
  - d. Describes how the relative of the child may enter into an agreement with the department to receive a subsidized guardianship payment.

**SECTION 4. AMENDMENT.** Subsection 5 of section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

5. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case ~~such~~ the limitation in this subsection does not apply.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 268****HOUSE BILL NO. 1333**

(Representatives Griffin, Delmore, Klemin)  
(Senators Lyson, Olafson, Schneider)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-03 of the North Dakota Century Code, relating to the jurisdiction of the juvenile court.

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

**SECTION 1.** A new subdivision to subsection 1 of section 27-20-03 of the North Dakota Century Code is created and enacted as follows:

Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 269****SENATE BILL NO. 2159**

(Senators Lyson, Robinson, Flakoll, Nelson)  
(Representative Delmore)

AN ACT to amend and reenact subsection 2 of section 27-20-14 of the North Dakota Century Code, relating to the detention of a child participating in a juvenile drug court program.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 27-20-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If a child is participating in a juvenile drug court program as a result of an adjudication for a delinquent offense, the drug court may order the child detained in a juvenile detention center operated pursuant to chapter 12-44.1. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 270****HOUSE BILL NO. 1108**

(Representative DeKrey)

(Senator Lyson)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact section 27-20-26 of the North Dakota Century Code, relating to the right to counsel under the Juvenile Court Act.

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

**SECTION 1. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-26. Right to counsel - Exceptions.**

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent ~~entitled to the custody~~ of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.

3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 271****SENATE BILL NO. 2169**

(Senators J. Lee, Lyson)

(Representatives DeKrey, Delmore, Gruchalla)

AN ACT to amend and reenact section 27-20-52 of the North Dakota Century Code, relating to the law enforcement or correctional facility records of a child.

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

**SECTION 1. AMENDMENT.** Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-52. Law enforcement and correctional facility records.** ~~Law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults.~~

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, ~~these records and files may~~ the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not be open to public inspection; but inspection of these records and files is permitted by:
  1. a. A juvenile court having the child before it in any proceeding;
  2. b. Counsel for a party to the proceeding;
  3. c. The officers of public institutions or agencies to whom the child is or may be committed;
  4. d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
  5. e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
  6. f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
  7. g. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, ~~nothing in this section may be construed to~~ does not limit the release of general information not identifying that does not identify the identity of the child.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 272****HOUSE BILL NO. 1159**

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 27-20-54 of the North Dakota Century Code, relating to the destruction of juvenile court records.

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

**SECTION 1. AMENDMENT.** Section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-54. Destruction of juvenile court records.**

1. Except as otherwise required under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, must be deleted. Each agency, except the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of human services, the department of corrections and rehabilitation, and county social service agencies may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, shall properly reply that no record exists with respect to the child.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 273

### HOUSE BILL NO. 1089

(Human Services Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact a new subsection to section 27-21-02 and two new subsections to section 27-21-12 of the North Dakota Century Code, relating to the powers and duties and files and records of the division of juvenile services; to amend and reenact sections 12-46-04, 12-46-09, 12-46-10, 12-46-10.1, 12-46-18, and 12-46-19 of the North Dakota Century Code, relating to the North Dakota youth correctional center; and to repeal sections 12-46-03, 12-46-05, 12-46-06, 12-46-11, 12-46-20, and 12-46-22 of the North Dakota Century Code, relating to the North Dakota youth correctional center.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12-46-04 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-04. Appointment and removal of officers.** ~~The director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall appoint the superintendent. The superintendent may be removed by the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing an inability or refusal to properly perform the duties of the office. All other officers and employees must be appointed by the superintendent, subject to the approval of the director of the division of juvenile services. The superintendent shall show in the record of any officer or employee who is discharged by the superintendent the reason therefor is the administrator of the North Dakota youth correctional center. The director may designate officers or employees of the North Dakota youth correctional center to carry out the administrator's duties.~~

**SECTION 2. AMENDMENT.** Section 12-46-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **12-46-09. Superintendent Administrator may make rules.**

1. ~~The superintendent, subject to the approval of the director of the division of juvenile services, shall administrator may make rules and regulations not in conflict with the laws of this state:~~
  4. a. For the admission of visitors.
  2. b. For the government of officers and employees of the North Dakota youth correctional center.
  3. c. For the conduct of ~~students~~ children committed to the North Dakota youth correctional center.

2. A printed copy of the rules and regulations must be furnished to each ~~student child~~ committed to the North Dakota youth correctional center at the time the ~~student child~~ is received and to each officer or employee at the time of hire. Two copies of such rules must be furnished to the state law library for the use of the state officials and the public.

**SECTION 3. AMENDMENT.** Section 12-46-10 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-10. Records of institutional transactions, complaints, and rule infractions.** The ~~superintendent~~ administrator shall ~~cause to be kept~~ maintain a correct record of all the transactions of the office and a correct account of all the ~~superintendent's doings.~~ The superintendent shall keep a memorandum of every complaint of cruel and unjust treatment of any officer or other person, and also of any infraction of the rules and regulations of the school by any of the students committed thereto, naming the student, and specifying the offense and the punishment, if any, inflicted therefor, and such record and memorandum must be laid before the ~~director of the division of juvenile services upon request~~ North Dakota youth correctional center.

**SECTION 4. AMENDMENT.** Section 12-46-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-10.1. Disciplinary committee - Members - Duties.** The ~~superintendent of the North Dakota youth correctional center~~ administrator shall appoint a disciplinary committee. ~~The membership of this committee should include,~~ including one cottage supervisor, ~~and~~ and one member of the professional staff, ~~and may include one student and one member of the general public, as determined by the superintendent.~~ The committee shall hear all charges of ~~serious breach of discipline~~ violations of North Dakota youth correctional center rules and regulations and recommend to the ~~superintendent~~ administrator what disciplinary action, ~~if any,~~ should be administered. The committee shall maintain records of its actions. These records are subject to review by the director of the ~~division of juvenile services~~ department of corrections and rehabilitation, the attorney general, or any legislative committee upon request. ~~Nothing in this section may be construed to prevent the superintendent from placing a child under close supervision immediately after that child commits a serious breach of discipline, however, within forty-eight hours the disciplinary committee shall hear the case and make its recommendations to the superintendent concerning further action to be taken, if any.~~

**SECTION 5. AMENDMENT.** Section 12-46-18 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-18. Employment and compensation of persons committed children.** Every ~~person child~~ committed to the custody of the division of juvenile services and ~~transferred to~~ placed at the North Dakota youth correctional center or its ~~auxiliary facilities~~ may receive a stipend as determined by the ~~superintendent, and approved by the director of the division of juvenile services administrator,~~ within the limits of appropriations made by the legislative assembly for such purpose.

**SECTION 6. AMENDMENT.** Section 12-46-19 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-19. Disposition of moneys earned received.** The ~~superintendent~~ administrator of the North Dakota youth correctional center shall keep a ~~students' account ledger, in which shall be opened an account with each student~~ an account

for each child placed at the North Dakota youth correctional center. The earnings of each student money in each child's account may be used for the child's personal needs as approved by the superintendent administrator.

**SECTION 7.** A new subsection to section 27-21-02 of the North Dakota Century Code is created and enacted as follows:

If the division of juvenile services receives any money on behalf of a child committed to its custody and care under this section for child support, payments in excess of foster care maintenance payments, or money received from the social security administration, the division may establish an account for the child and use the money in a manner it determines will serve the best interests of the child, including setting aside any amounts for the child's future needs or making all or part of the money available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

**SECTION 8.** Two new subsections to section 27-21-12 of the North Dakota Century Code are created and enacted as follows:

The records of the division relating to an individual who is or has been in the custody of the division may be disclosed to any court or probation staff for use in conducting a presentence investigation in a criminal case in which the individual is a defendant.

The records of the division relating to an individual who is or has been in the custody of the division may be disclosed to the United States social security administration upon written authorization for disclosure by the individual's parent or legal guardian if the individual is a child, or if the individual is no longer a child, by the individual.

**SECTION 9. REPEAL.** Sections 12-46-03, 12-46-05, 12-46-06, 12-46-11, 12-46-20, and 12-46-22 of the North Dakota Century Code are repealed.

Approved March 5, 2009  
Filed March 5, 2009

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 274

### HOUSE BILL NO. 1302

(Representative Klemin)

(Senator Nething)

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to extension of time for serving an expert opinion affidavit in medical liability actions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 28-01-46 of the North Dakota Century Code is amended and reenacted as follows:

**28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases.** Any action for injury or death alleging professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living facility licensed by this state or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, must be dismissed without prejudice on motion unless the plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action. The court may set a later date for serving the affidavit for good cause shown by the plaintiff if the plaintiff's request for an extension of time is made before the expiration of the three-month period following commencement of the action. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion. This section does not apply to unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 275****SENATE BILL NO. 2232**  
(Senator Holmberg)

AN ACT to create and enact sections 28-21-03.1 and 28-21-04.2 of the North Dakota Century Code, relating to general and summary execution of judgment; and to amend and reenact sections 28-21-01, 28-21-03, 28-21-04, 28-21-04.1, 28-21-05, 28-21-05.1, 28-21-06, 28-21-07, 28-21-08, 28-21-09, 28-21-10, 28-21-13, 28-21-17, 28-21-18, and 28-23-11 of the North Dakota Century Code, relating to execution of judgment.

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

**SECTION 1. AMENDMENT.** Section 28-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-01. Execution at any time within ten years.** ~~The party in whose favor a judgment has been given, and in case of creditor or the party's death, the party's duly appointed personal representatives duly appointed, at any time within ten years after the entry of judgment, may proceed to enforce the same judgment by execution as provided in this chapter. If the judgment creditor in a mortgage foreclosure does not proceed within sixty days after entry of judgment in the foreclosure to serve a special execution and proceed without delay to a sheriff's sale, any other lienholder or other interested person may obtain the special execution and proceed to arrange for a sheriff's sale.~~

**SECTION 2. AMENDMENT.** Section 28-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-03. Two kinds of execution.** ~~There shall be are two kinds of execution, one against the property of the judgment debtor, and another for the delivery of the possession of real or personal property or for such delivery with and any damages for withholding the same property.~~

**SECTION 3.** Section 28-21-03.1 of the North Dakota Century Code is created and enacted as follows:

**28-21-03.1. General execution.** If the judgment requires the payment of money or the delivery of property, the judgment may be enforced by execution.

**SECTION 4. AMENDMENT.** Section 28-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-04. Special executions.** ~~When a judgment requires the payment of money or the delivery of real or personal property, the judgment may be enforced in those respects by execution as provided in this chapter. When If the judgment requires the sale of property, the judgment may be enforced by a writ reciting such judgment, or the material parts of the judgment, and special execution directing the proper officer to execute the judgment by making the sale and applying application of the proceeds in conformity with the judgment. When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required by the judgment or~~

by law to obey the same, and the party's, person's, or officer's obedience thereto enforced. If the party, person, or officer refuses, the party, person, or officer may be punished by the court as for contempt. Real property must be sold in the county in which it is located.

**SECTION 5. AMENDMENT.** Section 28-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-04.1. Summary execution on moneys retained pursuant to garnishment Self-execution judgments.** When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt. If the judgment requires the performance of any act, obedience to that act may be enforced by service of a certified copy of the judgment upon the party against whom it is given, or the person who is required to obey the same. Refusal may be punished by contempt.

**SECTION 6.** Section 28-21-04.2 of the North Dakota Century Code is created and enacted as follows:

**28-21-04.2. Summary execution on moneys retained pursuant to garnishment.** If a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by personal service or by certified mail upon the third party by a sheriff or by an attorney licensed to practice law in this state. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 within twenty days after service of the garnishment summons, an execution may not be made against moneys claimed as exempt and retained under the garnishment summons until the court determines that the moneys being garnished are not exempt.

**SECTION 7. AMENDMENT.** Section 28-21-05 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-05. Execution issued to sheriff of counties where judgment docketed.** When the execution is against the property An execution may be issued by the clerk of the judgment debtor, it may be issued court in which the judgment was entered to the sheriff of any county where the judgment is docketed. When it if the execution requires the delivery of real or personal property, it the execution may be issued to the sheriff of any county where the property or some part thereof portion

of the property is situated. An execution must be issued from the court of the county which entered the judgment, though more More than one execution may be issued at the same time to the sheriffs of different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.

**SECTION 8. AMENDMENT.** Section 28-21-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-05.1. Levy with certified copy of judgment.** A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment against the person, which has been docketed in any county, and proper notice has been given to the debtor requiring payment of money or the delivery of personal property. The party in whose favor the judgment was entered creditor may also proceed to enforce the judgment by execution as provided in this chapter.

**SECTION 9. AMENDMENT.** Section 28-21-06 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-06. Issuance and contents of execution.** ~~The writ of~~ An execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff as provided in section 28-21-05. It ~~must refer intelligibly to describe the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor, the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known. If the execution is against the property of a judgment debtor, the~~ A special execution must also state the amount of money the judgment ordered the debtor to pay due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a different county other than that of the county of the issuing writ, the date and time the judgment was docketed in the that county of the sheriff to whom the execution is being issued. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and; if the same judgment orders the party against whom the judgment was rendered debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable due as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. If the execution is against the property of the judgment debtor, satisfy Satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the judgment debtor, and; if sufficient personal property cannot be found, out of the real property belonging to the debtor on the day date when the

judgment was docketed in the county or at any time ~~thereafter~~ after that date. If ~~real or personal~~ property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or

2. If the execution is for the delivery of the possession of ~~real or personal~~ property, deliver the ~~possession of the property~~ to the party entitled ~~thereto, to the property~~ and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the ~~party against whom it was rendered~~ judgment debtor and; if sufficient personal property cannot be found, out of the real property ~~belonging to the party of the judgment debtor~~ on the ~~day~~ date when the judgment was docketed in the county or at any time ~~thereafter~~ after that date. If ~~delivery of the property cannot be had~~ delivered, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the ~~party judgment debtor~~ as if an execution against the property of the party had been issued.

**SECTION 10. AMENDMENT.** Section 28-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-07. Time of return.** The execution is ~~returnable~~ must be returned to the clerk ~~with whom the record of the judgment is filed~~ within sixty days after ~~its~~ the receipt by the officer and, ~~except when,~~ if a sheriff's levy has been made within the sixty days, the execution is ~~returnable to the clerk~~ must be returned within a reasonable time following the completion of the sale of the property or ninety days after ~~its~~ receipt by the officer. If a levy has been made and the issue of ownership of the property or interest ~~therein~~ in the property is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

**SECTION 11. AMENDMENT.** Section 28-21-08 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-08. Property subject to levy - Manner of levy.** ~~All goods, chattels, moneys, and other property, both real and personal, or any interest therein,~~

1. ~~An interest in property of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are~~ is subject to execution. Shares and interests in any corporation or company, ~~and~~ debts and credits, and all other property, ~~both real and personal, and any interest in real or personal property, and all other property~~ not capable of manual delivery, may be taken on execution and sold as provided in this chapter. The levy under an execution must be made as follows:
  - 4- a. ~~Upon~~ On real property, the sheriff shall file a notice of levy with the recorder of the county in which the property is located ~~a notice of levy that which~~ has been signed by the sheriff and which states the names of the parties to the action and a description of the property.
  - 2- b. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the

sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.

3. c. ~~Upon~~ On money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution ~~and~~ levy to the person who has custody of ~~such~~ the property, except ~~as may be provided for in chapter 32-09-4~~ wage garnishment.
4. d. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy ~~under an execution~~ with the person holding the property ~~of~~:
  - a. If the property consists of a right or share in the stock of a corporation or interest or profits ~~thereon in the corporation~~, the sheriff shall leave the copy with the president or other head of the corporation, or the secretary, cashier, any officer or managing agent ~~thereof~~ of the corporation.
  - b. If the property consists of membership interests in a limited liability company or interest or profits ~~thereon in a limited liability company~~, the sheriff shall leave the copy with the president or other head of the limited liability company or the secretary, treasurer, any officer or managing agent ~~thereof~~ of the limited liability company.
2. The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property ~~which that~~ by reason of ~~its~~ bulk or other cause cannot be removed immediately ~~and upon service~~. Service of the notice of levy ~~in accordance with~~ under this section and section 28-21-12; ~~the levy~~ is as valid and effectual as if the property had been seized and the possession and control ~~thereof of the property~~ retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made ~~in accordance with~~ under this section and section 28-21-12.

**SECTION 12. AMENDMENT.** Section 28-21-09 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-09. Pledged or mortgaged property may be levied on.** When property is pledged or mortgaged or is subject to a lien ~~for the payment of money or the performance of any obligation~~, the right and interest of the ~~execution judgment debtor therein~~ may be sold ~~on execution~~ without taking possession of or removing the property to the place of sale, but the entire right and interest of ~~such~~ the debtor in ~~all~~ the property ~~separately~~ pledged or covered by each ~~separate mortgage or lien~~ must be sold ~~together as a distinct one parcel or thing~~, and the purchaser at ~~such sale shall acquire~~ acquires all the right and interest of ~~such the~~ debtor ~~therein~~.

**SECTION 13. AMENDMENT.** Section 28-21-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-10. Officer's proceedings on execution.** When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received ~~it the execution~~ and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold ~~at length~~ with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, ~~it~~ the execution must be returned wholly unsatisfied with all costs

incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in ~~such~~ the case must be stated in the return.

**SECTION 14. AMENDMENT.** Section 28-21-13 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-13. Amount levied - When lien on personalty.** The officer ~~in all cases~~ shall select ~~such as nearly as practicable~~ property ~~and~~ in ~~such~~ quantities as will be likely to bring the exact amount required to be raised ~~as nearly as practicable~~, and ~~having made one levy, at any time thereafter~~ may make ~~other levies more than one levy~~ if the officer ~~deems it determines~~ multiple levies necessary. ~~No~~ A writ of execution is not a lien on personal property before the actual levy ~~thereof~~.

**SECTION 15. AMENDMENT.** Section 28-21-17 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-17. Execution against principal first.** ~~In all cases when~~ If a judgment is rendered upon any instrument in writing in which two or more persons are severally bound, and it appears to the court ~~by parol or other testimony~~ that ~~one or more of said persons so bound~~ a person signed the same as surety or bail for that person's codefendant, the court in ~~entering judgment thereon~~ shall state which of the defendants is principal debtor and which is surety or bail. Execution issued on ~~such~~ the judgment must command the sheriff ~~or other officer~~ to cause the ~~money to be made of the personal property and real property~~ of the principal debtor, ~~but for want of sufficient property of the principal debtor to make the same to cause to be sold and if the proceeds from that sale are insufficient, to collect the same to be made of deficiency from the personal and real property of the surety or bail. In all cases the~~ The property, ~~both personal and real~~, of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail may be taken in execution.

**SECTION 16. AMENDMENT.** Section 28-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**28-21-18. Return of writ by mail.** When execution is issued in any county and directed and delivered to the sheriff ~~or coroner~~ of another county, the sheriff ~~or coroner having the execution after having discharged~~ discharging all the duties required by law shall mail the execution to the clerk who issued the execution. On proof by the sheriff ~~or coroner~~ that the execution was mailed soon enough to have reached the clerk ~~prior to before~~ the execution's expiration, the sheriff ~~or coroner~~ is not liable for any penalty if the execution does not reach the office in due time.

**SECTION 17. AMENDMENT.** Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-11. Purchaser's right - Sheriff's certificate.**

1. ~~Upon a sale of real property, the~~ The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the debtor to the property. If the estate is a leasehold less than a leasehold of two years' unexpired term, the sale is absolute. ~~In all other cases~~ Otherwise, the real property is subject to redemption ~~as provided in~~ under this title. The officer shall give to the purchaser a certificate of sale containing a:

- a. A particular description of the real property sold; ~~a~~
  - b. A statement of the price bid for each distinct lot or parcel; ~~a~~
  - c. A statement of the whole price paid; ~~the period of~~
  - d. If subject to redemption, a statement to that effect; and ~~the~~
  - e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.
2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

Approved April 30, 2009  
Filed May 1, 2009

## CHAPTER 276

### HOUSE BILL NO. 1039

(Legislative Council)  
(Judicial Process Committee)

AN ACT to amend and reenact sections 28-22-01, 28-22-02, 28-22-03, 28-22-03.1, 28-22-05, 28-22-07, 28-22-15, 47-18-01, 47-18-04, 47-18-14, and 47-18-16 of the North Dakota Century Code, relating to exemptions from process and the homestead exemption; and to repeal section 28-22-04 of the North Dakota Century Code, relating to alternative exemptions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 28-22-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-01. Property exempt from all process.** Except as otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment, prejudgment, or other mesne process and from levy and sale upon execution and from any other final process issued from any court.

**SECTION 2. AMENDMENT.** Section 28-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-02. Absolute exemption.** The property mentioned in this section is absolutely exempt from all process, levy, or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. ~~The One family Bible or other family primary religious text~~ and all schoolbooks used by the family and all other books used as a part of the family library ~~not exceeding in value one hundred dollars.~~
5. All wearing apparel, not exceeding five thousand dollars in value, and all clothing of the debtor and the debtor's family.
6. The in-kind provisions for the debtor and the debtor's family necessary for one year's supply, either provided or growing, or both, and in-kind fuel necessary for heating the debtor's home or operating the debtor's motor vehicle for one year.
7. The homestead as created, defined, and limited by law.
8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as the debtor's home, but the provisions of this subsection in no way affect seed,

thresher, or landlord liens, and if the debtor takes advantage of this subsection the debtor may not take any additional alternative exemptions provided under this chapter.

9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions if the insurance benefits are in cash or have been invested in other property capable of exemption under this chapter.
10. Any In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

**SECTION 3. AMENDMENT.** Section 28-22-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-03. Additional exemption for head of a family.** In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by that person's agent, may select from that person's other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five seven thousand five hundred dollars, which also is exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court. The exemption under this section may not be used to exempt a real estate interest of any kind.

**SECTION 4. AMENDMENT.** Section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-03.1. Additional exemptions for residents.** In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.
2. A motor vehicle exemption in one vehicle not to exceed ~~one~~ two thousand ~~two~~ nine hundred fifty dollars in value over security interests and liens upon that vehicle, or a motor vehicle exemption in one vehicle not to exceed thirty-two thousand dollars for a motor vehicle that has been modified at a cost of not less than one thousand five hundred dollars to accommodate an individual with a permanent physical disability who is the owner of that motor vehicle.
3. ~~Pensions, annuity policies or plans, and life insurance policies that, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at~~

least one year; individual retirement accounts; Keogh plans, Roth individual retirement accounts under section 408A of the Internal Revenue Code [Pub. L. 405-34; 411 Stat. 825; 26 U.S.C. 408A]; and simplified employee pension plans; and all other plans qualified under section 404 of the Internal Revenue Code [Pub. L. 83-504; 68A Stat. 134; 26 U.S.C. 404]; and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408]; and pension or retirement plans sponsored by nonprofit corporations or associations organized and operated exclusively for one or more of the purposes specified in 26 U.S.C. 501(c)(3); and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any tools, implements, or professional books of the trade of the debtor or the trade of a dependent of the debtor.

4. Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
5. The debtor's aggregate interest, not to exceed in value eight thousand dollars less any amount of property transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
6. Professionally prescribed health aids for the debtor or a dependent of the debtor.
7. Retirement funds that have been in effect for at least one year, to the extent those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986. The value of those assets exempted may not exceed one hundred thousand dollars for any one account or two hundred thousand dollars in aggregate for all accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents; ~~except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals.~~ Retirement funds are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.
- 4- 8. The debtor's right to receive, or property that is traceable to:
  - a. A payment, not to exceed fifteen thousand dollars, on account of the wrongful death of an individual of whom the debtor was a dependent.

- b. A payment, not to exceed fifteen thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - e. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - d. b. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.
    - c. A disability, illness, or unemployment benefit.
    - d. Alimony, support, or separate maintenance, but not property settlements, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
    - e. A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:
      - (1) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under that plan or contract arose;
      - (2) That payment is on account of age or length of service; and
      - (3) That plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.
9. The debtor's right to receive, or property that is traceable to:
- a. An award under a crime victim's reparation law.
  - b. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - c. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - d. A payment, not to exceed eighteen thousand four hundred fifty dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - e. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

**SECTION 5. AMENDMENT.** Section 28-22-05 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-05. Exemptions of a single an unmarried person without dependents.** In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, a single an unmarried person without any dependents, in person or by that person's agent, may select from that person's other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of two three thousand five seven hundred fifty dollars, which is exempt.

**SECTION 6. AMENDMENT.** Section 28-22-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-07. How exemptions claimed - Appraisal.** All property claimed as exempt must be selected by the debtor or the debtor's agent or attorney regardless of whether levy has been made yet on the property by the sheriff or levying officer. Failure to claim all exempt property at the time exemptions are claimed renders the unclaimed property nonexempt for purposes of this chapter. The value thereof, when material, must be determined by an appraisal made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, writ of attachment, or other process has been issued, desires to claim the benefit of section 28-22-03, such debtor or the debtor's agent or attorney, shall make a schedule of all of the debtor's personal property of every kind and character, including money on hand and debts due and owing to the debtor, and shall deliver the same to the officer having the execution, writ of attachment, or other process. The schedule must be subscribed and sworn to by the debtor or the debtor's agent or attorney, and any property owned by the debtor and not included in such schedule is not exempt. No claim for exemptions may be disallowed for insufficiency as to form unless three days' notice in writing has been given first of the insufficiency by the party in interest claiming such insufficiency to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if that person desires so to do, by serving upon the proper person an amended claim for exemptions.

**SECTION 7. AMENDMENT.** Section 28-22-15 of the North Dakota Century Code is amended and reenacted as follows:

**28-22-15. When only absolute exemptions allowed.** Only absolute exemptions may be allowed against process:

1. For the wages of a laborer or mechanic who is, or had been, employed by the judgment debtor;
2. Upon a debt incurred for property obtained under false pretenses;
3. For fines, penalties, or costs of criminal prosecutions;
4. ~~Against a corporation for profit or limited liability company;~~
5. Against a nonresident;
- 6- 5. Against a debtor who is in the act of removing with the debtor's family from the state; or

- 7- 6. Against a debtor who has absconded, taking the debtor's family along.

**SECTION 8. AMENDMENT.** Section 47-18-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-01. Homestead exemption - Area and value.** The homestead of any ~~person~~ individual, whether married or unmarried, residing in this state ~~shall consist~~ consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed ~~eighty one hundred~~ eighty one hundred thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. ~~In no case shall the~~ The homestead ~~may not~~ may not embrace different lots or tracts of land unless ~~they~~ the lots or tracts of land are contiguous. For purposes of this section, "contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

<sup>123</sup> **SECTION 9. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-04. When homestead subject to execution.** A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics' or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.
3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of ~~said the~~ the homestead is more than ~~eighty one hundred~~ eighty one hundred thousand dollars over and above liens or encumbrances thereon, and then only to the extent of any value in excess of the sum total of ~~such the~~ such the liens and encumbrances plus said ~~eighty one hundred~~ eighty one hundred thousand dollars.

**SECTION 10. AMENDMENT.** Section 47-18-14 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-14. Proceeds of sale exempt - Disposition.** If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the ~~eighty one hundred~~ eighty one hundred

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<sup>123</sup> Section 47-18-04 was also amended by section 15 of Senate Bill No. 2250, chapter 293.

thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

**SECTION 11. AMENDMENT.** Section 47-18-16 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-16. Proceeds of sale exempt.** If a homestead is conveyed as provided in section 47-18-05 or sold for the satisfaction of any lien mentioned in section 47-18-04, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, shall be for a period of one year from the date of the conveyance, is entitled thereafter to the same protection against legal process as the law gives to the homestead.

**SECTION 12. REPEAL.** Section 28-22-04 of the North Dakota Century Code is repealed.

Approved April 24, 2009

Filed April 29, 2009

## CHAPTER 277

### SENATE BILL NO. 2026

(Legislative Council)  
(Administrative Rules Committee)

AN ACT to amend and reenact section 28-32-15 of the North Dakota Century Code, relating to filing dates for administrative rules; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>124</sup> **SECTION 1. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **28-32-15. Filing of rules for publication - Effective date of rules.**

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the office of the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
  - (1) Rules filed with the legislative council from August ~~sixteenth~~ second through November ~~fifteenth~~ first become effective on the immediately succeeding January first.
  - (2) Rules filed with the legislative council from November ~~sixteenth~~ second through February ~~fifteenth~~ first become effective on the immediately succeeding April first.
  - (3) Rules filed with the legislative council from February ~~sixteenth~~ second through May ~~fifteenth~~ first become effective on the immediately succeeding July first.
  - (4) Rules filed with the legislative council from May ~~sixteenth~~ second through August ~~fifteenth~~ first become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless

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<sup>124</sup> Section 28-32-15 was also amended by section 24 of House Bill No. 1436, chapter 482.

otherwise provided, become effective when publication would have occurred but for the delay.

- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for rules filed with the legislative council after July 31, 2009.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 278****SENATE BILL NO. 2074**

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 28-35 of the North Dakota Century Code, relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; to repeal sections 30.1-29-02 and 30.1-29-32 of the North Dakota Century Code, relating to the jurisdiction of protective proceedings; and to provide an effective date.

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

**SECTION 1.** Chapter 28-35 of the North Dakota Century Code is created and enacted as follows:

**28-35-01. (102) Definitions.** In this chapter:

1. "Adult" means an individual who has attained eighteen years of age.
2. "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 30.1-29.
3. "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 30.1-28.
4. "Guardianship order" means an order appointing a guardian.
5. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
6. "Incapacitated person" means an adult for whom a guardian has been appointed.
7. "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
8. "Person", except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
9. "Protected person" means an adult for whom a protective order has been issued.
10. "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

11. "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.
12. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
13. "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.
14. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

**28-35-02. (103) International application of chapter.** A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 28-35-01, 28-35-02, 28-35-03, 28-35-04, 28-35-05, 28-35-06, 28-35-07, 28-35-08, 28-35-09, 28-35-10, 28-35-11, 28-35-12, 28-35-13, 28-35-14, 28-35-15, 28-35-16, and 28-35-20.

**28-35-03. (104) Communication between courts.**

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.
2. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

**28-35-04. (105) Cooperation between courts.**

1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:
  - a. Hold an evidentiary hearing;
  - b. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
  - c. Order that an evaluation or assessment be made of the respondent;
  - d. Order any appropriate investigation of a person involved in a proceeding;
  - e. Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision a or any other proceeding, any evidence otherwise produced under subdivision b, and any evaluation or assessment prepared in compliance with an order under subdivision c or d;





appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

4. The requirements for special jurisdiction under section 28-35-09 are met.

**28-35-09. (204) Special jurisdiction.**

1. A court of this state lacking jurisdiction under section 28-35-08 has special jurisdiction to do any of the following:
  - a. Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;
  - b. Issue a protective order with respect to real or tangible personal property located in this state; or
  - c. Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 28-35-15.
2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

**28-35-10. (205) Exclusive and continuing jurisdiction.** Except as otherwise provided in section 28-35-09, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until the appointment or order is terminated by the court or the appointment or order expires by its own terms.

**28-35-11. (206) Appropriate forum.**

1. A court of this state having jurisdiction under section 28-35-08 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum.
2. If a court of this state declines to exercise its jurisdiction under subsection 1, the court shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.
3. In determining whether a court is an appropriate forum, the court shall consider all relevant factors, including:
  - a. Any expressed preference of the respondent;
  - b. Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

- c. The length of time the respondent was physically present in or was a legal resident of this or another state;
- d. The distance of the respondent from the court in each state;
- e. The financial circumstances of the respondent's estate;
- f. The nature and location of the evidence;
- g. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- h. The familiarity of the court of each state with the facts and issues in the proceeding; and
- i. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

**28-35-12. (207) Jurisdiction declined by reason of conduct.**

1. If at any time a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:
  - a. Decline to exercise jurisdiction;
  - b. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
  - c. Continue to exercise jurisdiction after considering:
    - (1) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
    - (2) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3 of section 28-35-11; and
    - (3) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 28-35-09.
2. If a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or

a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

**28-35-13. (208) Notice of proceeding.** If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

**28-35-14. (209) Proceedings in more than one state.** Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subdivision a or b of subsection 1 of section 28-35-09, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in this state has jurisdiction under section 28-35-08, the court may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 28-35-09 before the appointment or issuance of the order.
2. If the court in this state does not have jurisdiction under section 28-35-08, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

**28-35-15. (301) Transfer of guardianship or conservatorship to another state.**

1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.
2. Notice of a petition under subsection 1 must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.
3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1.
4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:
  - a. The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;



4. The court shall issue an order provisionally granting a petition filed under subsection 1 unless:
  - a. An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or
  - b. The guardian or conservator is ineligible for appointment in this state.
5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon the court's receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 28-35-15 transferring the proceeding to this state.
6. No later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.
7. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.
8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under chapter 30.1-28 or 30.1-29 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

**28-35-17. (401) Registration of guardianship orders.** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgement in a court, in any appropriate county of this state, certified copies of the order and letters of office.

**28-35-18. (402) Registration of protective orders.** If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

**28-35-19. (403) Effect of registration.**

1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

**28-35-20. (502) Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 2. REPEAL.** Sections 30.1-29-02 and 30.1-29-32 of the North Dakota Century Code are repealed.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act applies to guardianship and protective proceedings begun after July 31, 2009. Sections 28-35-01 through 28-35-05 and sections 28-35-15 through 28-35-20 apply to proceedings begun before August 1, 2009, regardless of whether a guardianship or protective order has been issued.

Approved March 19, 2009

Filed March 19, 2009

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 279

### HOUSE BILL NO. 1288

(Representative DeKrey)

AN ACT to amend and reenact sections 12.1-08-11, 20.1-02-14.1, and 29-05-31 and subsection 5 of section 39-06.1-03 of the North Dakota Century Code, relating to complaint and summons procedures and administrative hearing appeals; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 12.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-08-11. Fleeing a peace officer Refusing to halt.** Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

**SECTION 2. AMENDMENT.** Section 20.1-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-02-14.1. Uniform complaint and summons - Promise to appear - Penalty.**

1. There is ~~hereby~~ established a uniform complaint and summons that may be used in cases involving violations of this title or other violations of a state law which occur on property that the department owns, leases, or manages or on sovereign lands as defined by section 61-33-01. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure ~~relating to arrests without warrants do not apply, and the magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons apply.~~ The uniform complaint and summons must be of a form prescribed by the director and approved by the attorney general.

2. The time of court appearance to be specified in the summons must be at least five days after the issuance of the summons unless the defendant demands an earlier hearing.
3. Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, the defendant must be released from custody. After signing a promise to appear, the defendant must be given a copy of the uniform complaint and summons. Any person refusing to give a written promise to appear may be arrested if proper cause exists, or proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure. Defendant's failure to appear at the time and place designated after signing a promise to appear is a class B misdemeanor.

The uniform summons and complaint may not be used if the officer, acting within the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a magistrate. The halting officer shall forthwith take any person not released upon that person's promise to appear before the nearest or most accessible magistrate. If an individual fails to appear in court after promising to do so, the court may issue an arrest warrant and in addition to other conditions shall order the department to suspend the individual's hunting, fishing, and trapping privileges until after the final disposition of the case.

**SECTION 3. AMENDMENT.** Section 29-05-31 of the North Dakota Century Code is amended and reenacted as follows:

**29-05-31. Uniform traffic complaint and summons.** There is hereby established a uniform complaint and summons that may be used in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles. ~~Whenever the complaint and summons established by this section is used, the provisions of rule 5 of the North Dakota Rules of Criminal Procedure relating to arrests without warrants do not apply, and magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons.~~ The use of a uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure and be in substantially the following form:

State of North Dakota )
) ss. In \_\_\_\_\_ Court,
County of \_\_\_\_\_ ) Before Hon. \_\_\_\_\_;

The undersigned, being sworn, says that, on \_\_\_\_\_, \_\_\_\_\_,

First Name Middle Name Last Name Street City State
did unlawfully operate a motor vehicle upon a public highway, namely
\_\_\_\_\_ N E S W of \_\_\_\_\_ and did then and there commit

Location \_\_\_\_\_ City \_\_\_\_\_
the following offense: \_\_\_\_\_
MPH in \_\_\_\_\_
MPH Zone \_\_\_\_\_

All in violation of N. D. Century Code Sec. \_\_\_\_\_ and against the peace and dignity
of the state of N. D.

Officer \_\_\_\_\_ LET A WARRANT ISSUE HEREIN Sworn to and subscribed
before me on \_\_\_\_\_, \_\_\_\_\_.

Judge \_\_\_\_\_ State's Attorney \_\_\_\_\_

DESCRIPTION OF DEFENDANT AND VEHICLE
Mo. \_\_\_\_\_ Day \_\_\_\_\_ Yr. \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Wt. \_\_\_\_\_ Ht. \_\_\_\_\_
Birth date \_\_\_\_\_
Hair \_\_\_\_\_ Dr. Lic: State \_\_\_\_\_ No. \_\_\_\_\_ Motor Vehicle:
PSC
Make \_\_\_\_\_ Reg. No. \_\_\_\_\_ State \_\_\_\_\_ Year \_\_\_\_\_ ICC No. \_\_\_\_\_

CLAIMED CONDITIONS OF THE VIOLATION
SLIPPERY SURFACE
\_\_\_\_\_ Rain \_\_\_\_\_ Snow \_\_\_\_\_ Ice

DARKNESS
\_\_\_\_\_ Night \_\_\_\_\_ Fog \_\_\_\_\_ Snow

OTHER TRAFFIC PRESENT
\_\_\_\_\_ Cross \_\_\_\_\_ Oncoming \_\_\_\_\_ Pedestrian \_\_\_\_\_ Same direction

IN ACCIDENT
\_\_\_\_\_ Ped. \_\_\_\_\_ Vehicle \_\_\_\_\_ Intersection
\_\_\_\_\_ Right angle \_\_\_\_\_ Head on \_\_\_\_\_ Rear end
\_\_\_\_\_ Ran off road \_\_\_\_\_ Other

Area: \_\_\_\_\_ School \_\_\_\_\_ Rural \_\_\_\_\_ Business
\_\_\_\_\_ Industrial \_\_\_\_\_ Residential
Highway: \_\_\_\_\_ 2 Lane \_\_\_\_\_ 4 Lane \_\_\_\_\_ 4 Lane Divided
Type \_\_\_\_\_ Gravel \_\_\_\_\_ Dirt

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT
\_\_\_\_\_ Yes \_\_\_\_\_ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT
(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are summoned to appear at the time and place designated below to answer to the charge made against you.

Appearance
Before: Municipal Judge District Ct. \_\_\_\_\_ A.M./P.M.
Location Month Day Year Time
Dated \_\_\_\_\_, \_\_\_\_\_
Officer \_\_\_\_\_

PROMISE TO APPEAR

I consent and promise to appear at the time and place specified in the above
summons, the receipt of a copy of which is acknowledged, and I expressly waive
earlier hearing.

Dated \_\_\_\_\_, \_\_\_\_\_
Defendant \_\_\_\_\_

## (STATE NONCRIMINAL TRAFFIC VIOLATION)

You are notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

## REQUEST FOR HEARING

I submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated \_\_\_\_\_, \_\_\_\_\_  
Defendant \_\_\_\_\_

**SECTION 4. AMENDMENT.** Subsection 5 of section 39-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. A person may not appeal a finding from a district judge or magistrate that the person committed the violation. If a person is aggrieved by a finding in the municipal court that the person committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.
- b. The appellate court upon application by the appellant may:
  - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
  - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
  - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the

appellant's driving record, for the furnishing of which the licensing authority may charge a fee of three dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

- c. If the person charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the licensing authority immediately. ¶ Unless the appropriate state's attorney consents to prosecute the appeal, if an appeal under this subsection is from a violation of a city ordinance, the city attorney for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on January 1, 2010.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 280****SENATE BILL NO. 2119**

(Judiciary Committee)

(At the request of the Supreme Court)

AN ACT to amend and reenact sections 29-17-03 and 29-17-13 of the North Dakota Century Code, relating to selection of prospective jurors; and to repeal sections 29-17-05, 29-17-06, 29-17-07, 29-17-08, 29-17-10, and 29-17-11 of the North Dakota Century Code, relating to selection of jurors.

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

**SECTION 1. AMENDMENT.** Section 29-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**29-17-03. Clerk to prepare ballots selection of juror names - Randomized list.** At the opening of the court, the clerk shall prepare separate ballots, each containing the name of a person returned as a juror. Such ballots must be folded as nearly alike as possible and so that the name cannot be seen, and must be deposited in a sufficient box select the names of prospective jurors from a randomized list of names developed in accordance with chapter 27-09.1 and supreme court rule.

**SECTION 2. AMENDMENT.** Section 29-17-13 of the North Dakota Century Code is amended and reenacted as follows:

**29-17-13. Number failing, others summoned.** If a sufficient number of jurors cannot be obtained from the box selected to form a trial jury, the court, as often as is necessary, may order the sheriff to summon from the body of the county as many persons qualified to serve as jurors as the court deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and as many of them not excused or discharged as may be necessary to complete the jury must be impaneled and sworn.

**SECTION 3. REPEAL.** Sections 29-17-05, 29-17-06, 29-17-07, 29-17-08, 29-17-10, and 29-17-11 of the North Dakota Century Code are repealed.

Approved March 19, 2009

Filed March 19, 2009

## CHAPTER 281

### SENATE BILL NO. 2028

(Legislative Council)  
(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact section 29-26-22 of the North Dakota Century Code, relating to the community service supervision fee.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

#### **29-26-22. Judgment for fines - Court administration fee - Community service supervision fee - Special funds - Docketing and enforcement.**

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony.
2. In addition, in all criminal cases except infractions, the court administration fee must include one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used to contract for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.
3. In addition to any court administration fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of ~~fifty~~ twenty-five dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.
4. A court may waive the administration fee or community service supervision fee upon a showing of indigency as provided in section 25-03.1-13. District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine or fees, or both, may be docketed and if docketed constitutes a lien upon the real estate of the defendant in like manner as a judgment for money

rendered in a civil action. The court may allow the defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 282****SENATE BILL NO. 2182**

(Senator Lyson)

(Representative Griffin)

AN ACT to amend and reenact section 29-31.1-02 of the North Dakota Century Code, relating to return of seized property.

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

**SECTION 1. AMENDMENT.** Section 29-31.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**29-31.1-02. Disposition of nonforfeitable property.** Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

Approved April 8, 2009

Filed April 9, 2009

# UNIFORM PROBATE CODE

## CHAPTER 283

### HOUSE BILL NO. 1072

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 30.1-04-14, 30.1-04-15, 30.1-04-16, 30.1-04-17, 30.1-04-18, 30.1-04-19, 30.1-04-20, 30.1-04-21, 30.1-10-05, and 30.1-10-06 of the North Dakota Century Code, relating to the Uniform Probate Code; and to amend and reenact sections 30.1-01-06, 30.1-04-02, 30.1-04-03, 30.1-04-04, 30.1-04-08, 30.1-04-09, 30.1-05-01, 30.1-07-01, 30.1-07-03, 30.1-08-02, 30.1-08-04, 30.1-09.1-05, 30.1-09.1-06, 30.1-09.1-07, 30.1-15-06, and 30.1-35-01 of the North Dakota Century Code, relating to the Uniform Probate Code.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-06. (1-201) General definitions.** Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
3. "Augmented estate" means the estate described in section 30.1-05-02.
4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an account with a payable on death designation, of a security registered in beneficiary form transferable on death, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an account with payable on death designation, of a

security registered in beneficiary form transferable on death, or other nonprobate transfer at death.

6. "Child" includes an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
7. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.
9. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.
10. "Descendant" of an individual means all descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.
11. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.
12. "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
13. "Disability" means cause for a protective order as described in section 30.1-29-01.
14. "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
15. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.

17. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
18. "Foreign personal representative" means a personal representative appointed by another jurisdiction.
19. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
20. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
21. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.
22. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
23. "Incapacitated person" means an individual described in section 30.1-26-01.
24. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
25. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
26. "Issue" of a person means descendant as defined in subsection 10.
27. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
28. "Lease" includes an oil, gas, or other mineral lease.
29. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

30. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity, and includes limited conservators as described by section 30.1-29-20.
31. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity, and includes limited guardians as described by section 30.1-28-04.
32. "Minor" means a person who is under eighteen years of age.
33. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
34. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.
35. "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
36. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
37. "Payer" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
38. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity.
39. "Person with limited capacity" is as defined in section 30.1-26-01.
40. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
41. "Petition" means a written request to the court for an order after notice.
42. "Proceeding" includes action at law and suit in equity.
43. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
44. "Protected person" is as defined in section 30.1-26-01.
45. "Protective proceeding" means a proceeding described in section 30.1-26-01.

46. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
47. "Security" includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
47. 48. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
49. "Sign" means, with present intent to authenticate or adopt a record other than a will, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.
48. 50. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
49. 51. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
50. 52. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
54. 53. "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
52. 54. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
53. 55. "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections 30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".
54. 56. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
55. 57. "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, business trusts providing

for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

- 56- 58. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 57- 59. "Ward" means an individual described in section 30.1-26-01.
- 58- 60. "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

**SECTION 2. AMENDMENT.** Section 30.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-02. (2-102) Share of spouse.** The intestate share of a decedent's surviving spouse is:

1. The entire intestate estate if:
  - a. No descendant or parent of the decedent survives the decedent; or
  - b. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.
2. The first ~~two~~ three hundred thousand dollars, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.
3. The first ~~one~~ two hundred ~~thirty~~ twenty-five thousand dollars, plus one-half of any balance of the intestate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent.
4. The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

**SECTION 3. AMENDMENT.** Section 30.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-03. (2-103) Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to ~~the~~ a decedent's surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals ~~designated below~~ who survive the decedent:

1. To the decedent's descendants by representation.

2. If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent.
3. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation.
4. If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents, ~~half of the estate passes;~~
  - a. Half to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the ~~decedent's~~ descendants taking by representation; and ~~the other half passes~~
  - b. Half to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes grandparents equally if both survive, or to the surviving maternal grandparent, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation.
5. If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the other side with one or more surviving members in the same manner as the half as described in subsection 4.
6. If there is no surviving spouse, descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, but the intestate decedent has one deceased spouse who has one or more descendants who survive the decedent, to those descendants by representation or has more than one deceased spouse who has one or more descendants who survive the decedent, the estate is divided into as many equal shares as there are deceased spouses, each share passing to those descendants by representation.

**SECTION 4. AMENDMENT.** Section 30.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-04. (2-104) Requirement that heir survive decedent for one hundred twenty hours - Individual in gestation.**

1. For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection 2:
  - a. An individual who was born before a decedent's death but who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual

who would otherwise be an heir was born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under section 30.1-04-05.

- b. An individual who was in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established by clear and convincing evidence that an individual who was in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period.
2. This section does not apply if it would result in a taking of the intestate estate by the state under section 30.1-04-05.

**SECTION 5. AMENDMENT.** Section 30.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-08. (2-108) Afterborn heirs Reserved.** An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

**SECTION 6. AMENDMENT.** Section 30.1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-09. (2-114) Meaning of child and related terms Parent barred from inheriting in certain circumstances.** If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent.
2. Inheritance from and through a child by either natural parent or kindred is precluded unless that natural parent has openly treated the child as the parent's, and has not refused to support the child.
3. In cases not covered by subsections 1 and 2, an individual is the child of its natural parents regardless of the marital status of its parents. The parent and child relationship may be established under chapter 14-17. A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished or the child died before reaching eighteen years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the child's parent could have been terminated under other law of this state on the basis of nonsupport, abandonment, abuse, or neglect, or other actions or inactions of the parent toward the child.

2. For purposes of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

**SECTION 7.** Section 30.1-04-14 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-14. (2-115) Definitions.** In sections 30.1-04-14 through 30.1-04-20:

1. "Adoptee" means an individual who is adopted.
2. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.
3. "Divorce" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage.
4. "Functioned as a parent of the child" means behaving toward the child in a manner consistent with being the child's parent and performing parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as regular members of that household.
5. "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under subdivision a, b, or c of subsection 2 of section 14-20-07, the term means only the man for whom that relationship is established.
6. "Genetic mother" means the woman whose egg was fertilized by the sperm of the child's genetic father.
7. "Genetic parent" means a child's genetic father or genetic mother.
8. "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.
9. "Relative" means a grandparent or a descendant of a grandparent.

**SECTION 8.** Section 30.1-04-15 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-15. (2-116) Parent-child relationship - Effect.** Except as otherwise provided in subsections 2 through 4 of section 30.1-04-18, if a parent-child relationship exists or is established under sections 30.1-04-14 through 30.1-04-20, the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession.

**SECTION 9.** Section 30.1-04-16 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-16. (2-117) Parent-child relationship - No distinction based on marital status.** Except as otherwise provided in section 30.1-04-09, 30.1-04-18,

30.1-04-19, or 30.1-04-20, a parent-child relationship exists between a child and the child's genetic parents, regardless of their marital status.

**SECTION 10.** Section 30.1-04-17 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-17. (2-118) Parent-child relationship - Adoptee and adoptee's adoptive parent or parents.**

1. A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.
2. For purposes of subsection 1:
  - a. An individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse.
  - b. A child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by one hundred twenty hours.
3. If, after a parent-child relationship is established between a child of assisted reproduction and a parent under section 30.1-04-19 or between a gestational child and a parent under section 30.1-04-20, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for purposes of subdivision b of subsection 2.

**SECTION 11.** Section 30.1-04-18 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-18. (2-119) Parent-child relationship - Adoptee and adoptee's genetic parents.**

1. Except as otherwise provided in subsections 2 through 4, a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.
2. A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:
  - a. The genetic parent whose spouse adopted the individual; and
  - b. The other genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.
3. A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

4. A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.
5. If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under section 30.1-04-19 or between a gestational child and a parent or parents under section 30.1-04-20, the child is adopted by another or others, the child's parent or parents under section 30.1-04-19 or 30.1-04-20 are deemed the child's genetic parent or parents for purposes of this section.

**SECTION 12.** Section 30.1-04-19 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-19. (2-120) Parent-child relationship - Child conceived by assisted reproduction other than a child born to a gestational carrier.**

1. In this section:
  - a. "Birth mother" means a woman, other than a gestational carrier under section 30.1-04-20, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.
  - b. "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under section 30.1-04-20.
  - c. "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife; the birth mother of a child of assisted reproduction; or an individual who is determined under subsection 5 or 6 to have a parent-child relationship with a child of assisted reproduction.
2. A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.
3. A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.
4. Except as otherwise provided in subsections 9 and 10, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction, and the husband is the genetic father of the child.
5. A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

6. Except as otherwise provided in subsections 7, 9, and 10, and unless a parent-child relationship is established under subsection 4 or 5, a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:
  - a. Before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or
  - b. In the absence of a signed record under subdivision a, functioned as a parent of the child no later than two years after the child's birth; intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or intended to be treated as a parent of a posthumously conceived child if that intent is established by clear and convincing evidence.
7. For purposes of subdivision a of subsection 6, neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached the age of majority.
8. For purposes of subdivision b of subsection 6, if the birth mother is married and no divorce proceedings are pending or if the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceedings were then pending then, in the absence of clear and convincing evidence to the contrary, her spouse or deceased spouse is deemed to have satisfied subdivision b of subsection 6.
9. If a married couple are divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.
10. If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies the requirements of subsection 6.
11. If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of subdivision b of subsection 1 of section 30.1-04-04 if the child is in utero not later than thirty-six months after the individual's death; or born not later than forty-five months after the individual's death.

**SECTION 13.** Section 30.1-04-20 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-20. (2-121) Parent-child relationship - Child born to a gestational carrier.**

1. In this section:
  - a. "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection 5.
  - b. "Gestational carrier" means a woman who is not an intended parent and who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.
  - c. "Gestational child" means a child born to a gestational carrier under a gestational agreement.
  - d. "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.
2. A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.
3. A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:
  - a. Designated as a parent of the child in a court order described in subsection 2; or
  - b. The child's genetic mother and a parent-child relationship does not exist with an individual other than the gestational carrier under this section.
4. In the absence of a court order under subsection 2, a parent-child relationship exists between a gestational child and an intended parent who:
  - a. Functioned as a parent of the child no later than two years after the child's birth; or
  - b. Died while the gestational carrier was pregnant if:
    - (1) There were two intended parents and the other intended parent survived the birth of the child and functioned as a parent of the child no later than two years after the child's birth;
    - (2) There were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

- (3) There was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.
5. In the absence of a court order under subsection 2, a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent can be shown by:
- a. A record, signed by the individual that, considering all the facts and circumstances, evidences the individual's intent; or
  - b. Other facts and circumstances establishing the individual's intent by clear and convincing evidence.
6. Except as otherwise provided in subsection 7, and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subdivision b of subsection 5 if:
- a. The individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;
  - b. When the individual deposited the sperm or eggs, the individual was married and no divorce proceedings were pending; and
  - c. The individual's spouse or surviving spouse functioned as a parent of the child not later than two years after the child's birth.
7. The presumption under subsection 6 does not apply if there is a court order under subsection 2; or a signed record that satisfies subdivision a of subsection 5.
8. If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of subdivision b of subsection 1 of section 30.1-04-04 if the child is in utero not later than thirty-six months after the individual's death; or born not later than forty-five months after the individual's death.
9. This section does not affect other law of this state regarding the enforceability or validity of a gestational agreement.

**SECTION 14.** Section 30.1-04-21 of the North Dakota Century Code is created and enacted as follows:

**30.1-04-21. Equitable adoption.** Sections 30.1-04-14 through 30.1-04-20 do not preclude, limit, or affect application of the doctrine of equitable adoption.

**SECTION 15. AMENDMENT.** Section 30.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-05-01. (2-201) Elective share.**

1. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this chapter, to take an elective share of ~~one-half~~ amount equal to fifty percent of the augmented estate.
2. If the sum of the amounts described in subdivision d of subsection 2 of section 30.1-05-02, subdivision a of subsection 1 of section 30.1-05-03, and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under subsections 2 and 3 of section 30.1-05-03 is less than fifty seventy-five thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to fifty seventy-five thousand dollars minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in subsections 2 and 3 of section 30.1-05-03.
3. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against, but are in addition to, the elective-share and supplemental elective-share amounts.
4. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

**SECTION 16. AMENDMENT.** Section 30.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-01. (2-403) Exempt property.** In addition to the homestead defined in section 47-18-01, the decedent's surviving spouse is entitled from the estate to a value, not exceeding ~~ten fifteen~~ thousand dollars in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's minor children, whom the decedent was obligated to support and children who were in fact being supported by the decedent, are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than ~~ten fifteen~~ thousand dollars, or if there is not ~~ten fifteen~~ thousand dollars worth of exempt property in the estate, the spouse or such children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~ten fifteen~~ thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

**SECTION 17. AMENDMENT.** Section 30.1-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-03. (2-405) Source, determination, and documentation.**

1. If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are

adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative may determine the family allowance in a lump sum not exceeding ~~eighteen~~ twenty-seven thousand dollars or periodic installments not exceeding ~~one~~ two thousand ~~five~~ two hundred ~~fifty~~ dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section 30.1-05-06.

**SECTION 18. AMENDMENT.** Section 30.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-02. (2-502) Execution - Witnessed wills - Holographic wills.**

1. Except as provided in subsection 2 and in sections 30.1-08-06 and 30.1-08-13, a will must be:
  - a. In writing.
  - b. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
  - c. **Signed by** Either signed:
    - (1) By at least two individuals, each of whom signed within a reasonable time after witnessing either the signing of the will as described in subdivision b or the testator's acknowledgment of that signature or acknowledgment of the will-; or
    - (2) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
2. A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
3. Intent that ~~the~~ a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

**SECTION 19. AMENDMENT.** Section 30.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-04. (2-504) Self-proved will.**

- 1. A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am ~~eighteen~~ 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly or willingly directs another to sign for the testator, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is ~~eighteen~~ 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_; and \_\_\_\_\_, ~~witness~~ witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL) (Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

- 2. ~~An attested~~ A will that is executed with attesting witnesses may at any time after its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the

officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly or willingly directed another to sign for the testator, and that the testator executed it as the testator's free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time ~~eighteen or more~~ 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator  
\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL) (Signed) \_\_\_\_\_  
\_\_\_\_\_  
(Official capacity of officer)

- 3. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

**SECTION 20. AMENDMENT.** Section 30.1-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-05. (2-705) Class gifts construed to accord with intestate succession - Exceptions.**

- 1. ~~Adopted individuals~~ In this section:
  - a. "Adoptee" has the meaning set forth in section 30.1-04-14.
  - b. "Child of assisted reproduction" has the meaning set forth in section 30.1-04-19.
  - c. "Distribution date" means the time when an immediate or a postponed class gift is to take effect in possession or enjoyment.

- d. "Functioned as a parent of the adoptee" has the meaning set forth in section 30.1-04-14, substituting "adoptee" for "child" in that definition.
  - e. "Functioned as a parent of the child" has the meaning set forth in section 30.1-04-14.
  - f. "Genetic parent" has the meaning set forth in section 30.1-04-14.
  - g. "Gestational child" has the meaning set forth in section 30.1-04-20.
  - h. "Relative" has the meaning set forth in section 30.1-04-14.
2. A child of assisted reproduction, a gestational child, and except as otherwise provided in subsections 3 and 4, an adoptee and individuals born out of wedlock a child born to parents not married to each other, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship in a governing instrument which do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships. Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by affinity marriage, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships marriage unless:
- a. When the governing instrument was executed, the class was then and foreseeably would be empty; or
  - b. The language or circumstances otherwise establish that relatives by marriage were intended to be included.
3. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the natural genetic parent, an individual born to the natural a child of a genetic parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse parent, a relative of the genetic parent, or the spouse or surviving spouse of a relative of the genetic parent functioned as a parent of the child before the child reached eighteen years of age.
4. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the adopting adoptive parent, an adopted individual adoptee is not considered the child of the adopting adoptive parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent:
- a. The adoption took place before the adoptee reached eighteen years of age;

- b. The adoptive parent was the adoptee's stepparent or foster parent; or
  - c. The adoptive parent functioned as a parent of the adoptee before the adoptee reached eighteen years of age.
5. The following rules apply for purposes of the class-closing rules:
- a. A child in utero at a particular time is treated as living at that time if the child lives one hundred twenty hours after birth.
  - b. If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives one hundred twenty hours after birth and was in utero not later than thirty-six months after the deceased parent's death or born not later than forty-five months after the deceased parent's death.
  - c. An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

**SECTION 21. AMENDMENT.** Section 30.1-09.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-06. (2-706) Life insurance - Retirement plan - Account with payable on death designation - Transfer-on-death registration - Deceased beneficiary.**

1. In this section:
  - a. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.
  - b. "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes a class member if the beneficiary designation is in the form of a class gift and includes an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.
  - c. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.
  - d. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary

- designation in the form of a class gift had the individual survived the decedent.
- e. "Descendant of a grandparent", as used in subsection 2, means an individual who qualifies as a descendant of a grandparent of the decedent under the rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift or rules for intestate succession if the beneficiary designation is not in the form of a class gift.
  - f. "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subdivisions a and b of subsection 2, mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.
  - g. "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.
  - f. h. "Surviving" in the phrase "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-09.1-02.
2. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:
- a. Except as provided in subdivision d, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.
  - b. Except as provided in subdivision d, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

- c. For purposes of section 30.1-09.1-01, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.
  - d. If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary designation:~~
    - (1) The alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or
    - (2) The alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation, and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the property passes under the primary substitute gift.
  - b. If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:
    - (1) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.
    - (3) "Younger-generation beneficiary designation" means a beneficiary designation that is to a descendant of a beneficiary of the primary beneficiary designation, is an alternative beneficiary designation with respect to the primary beneficiary designation, is a beneficiary designation for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

- (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.
4. a. A payer is protected from liability in making payments under the terms of the beneficiary designation until the payer has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payer, but not the recipient, from all claims for the amounts paid. A payer is liable for a payment made after the payer has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.
- b. The written notice of the claim must be mailed to the payer's main office or home by registered mail, return receipt requested, or served upon the payer in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payer may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payer from all claims for the amounts paid.
5. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item or property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**SECTION 22. AMENDMENT.** Section 30.1-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09.1-07. (2-707) Survivorship with respect to future interests under the terms of a trust - Substitute takers.**

1. In this section:
  - a. "Alternative future interest" means to an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.
  - b. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.
  - c. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.
  - d. "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subdivisions a and b of subsection 2, mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.
  - e. "Distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
  - e- f. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.
  - f. g. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.
  - g- h. "Surviving" in the phrase "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.
2. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:
  - a. Except as provided in subdivision d, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the

beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

- b. Except as provided in subdivision d, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this ~~paragraph~~ subdivision, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.
  - c. For purposes of section 30.1-09.1-01, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.
  - d. If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative future interest ~~only if an expressly designated beneficiary of the alternative future interest:~~
    - (1) The alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or
    - (2) The alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the property passes under the primary substitute gift.

- b. If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
- c. In this subsection:
  - (1) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interest who left surviving descendants survived the distribution date.
  - (2) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.
  - (3) "Younger-generation future interest" means a future interest that is to a descendant of a beneficiary of the primary future interest, is an alternative future interest with respect to the primary future interest, is a future interest for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary of beneficiaries of the primary future interest.
  - (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.
- 4. Except as provided in subsection 5, if, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order:
  - a. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.
  - b. If no taker is produced by the application of subdivision a, the property passes to the transferor's heirs under section 30.1-09.1-11.
- 5. If, after the application of subsections 2 and 3, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:
  - a. The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and
  - b. If no taker is produced by the application of subdivision a, the property passes as provided in subsection 4. For purposes of subsection 4, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

**SECTION 23.** Section 30.1-10-05 of the North Dakota Century Code is created and enacted as follows:

**30.1-10-05. (2-805) Reformation to correct mistakes.** The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

**SECTION 24.** Section 30.1-10-06 of the North Dakota Century Code is created and enacted as follows:

**30.1-10-06. (2-806) Modification to achieve transferor's tax objectives.** To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

**SECTION 25. AMENDMENT.** Section 30.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-15-06. (3-406) Formal testacy proceedings - Contested cases - Testimony of attesting witnesses.** In a contested case in which the proper execution of a will is at issue, the following rules apply:

1. If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence. If the will is self-proved pursuant to section 30.1-08-04, the will complies with the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.
2. If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit. If the will is notarized pursuant to paragraph 2 of subdivision c of subsection 1 of section 30.1-08-02, but not self-proved, there is a rebuttable presumption that the will complies with the requirements for execution upon filing the will.
3. If the will is witnessed pursuant to paragraph 1 of subdivision c of subsection 1 of section 30.1-08-02, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

**SECTION 26. AMENDMENT.** Section 30.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-35-01. Time of taking effect - Provisions for transition.**

1. This title takes effect on July 1, 1975.
2. Except as provided elsewhere in this title, on the effective date of this title or any amendment to this title:
  - a. ~~¶~~ The title or amendment applies to any wills of decedents dying thereafter. No provision of this title, however, shall be effective to invalidate any will executed prior to July 1, 1975, when that will would be valid under the laws of this state in effect at the time of its execution.
  - b. The title or amendment applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this title.
  - c. Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date continues to hold the appointment but has only the powers conferred by this title or the amendment and is subject to the duties imposed with respect to any act occurring or done thereafter.
  - d. An act done before the effective date in any proceeding and any accrued right is not impaired by this title or the amendment. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.
  - e. Any rule of construction or presumption provided in this title or the amendment applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.
  - f. A person holding office as judge of the court on the effective date of this title may continue the office of judge of this court and may be selected for additional terms after the effective date of this title.

Approved March 19, 2009

Filed March 24, 2009

**CHAPTER 284****SENATE BILL NO. 2156**

(Senators Lyson, Nething, Triplett, Fiebiger)  
(Representatives Kretschmar, Klemin)

AN ACT to amend and reenact section 30.1-24-05 of the North Dakota Century Code, relating to appointment of a foreign personal representative.

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

**SECTION 1. AMENDMENT.** Section 30.1-24-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-24-05. (4-204) Proof of authority - Bond.** If no local administration or application or petition ~~therefor~~ for local administration is pending in this state, a domiciliary foreign personal representative may file with a court in this state, in a county in which property belonging to the decedent is located, authenticated or certified copies of the person's appointment and of any official bond the person has given, and the court shall enter an order establishing the filing of the copies.

Approved April 8, 2009

Filed April 9, 2009

# JUDICIAL REMEDIES

## CHAPTER 285

### HOUSE BILL NO. 1069

(Representative DeKrey)

AN ACT to amend and reenact subsection 9 of section 32-03.2-11 of the North Dakota Century Code, relating to exemplary damages.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 32-03.2-11 of the North Dakota Century Code is amended and reenacted as follows:

9. In a civil action involving a motor vehicle accident resulting in bodily injury, it is sufficient for the trier of fact to consider an award of exemplary damages against the driver under the motion procedures provided in subsection 1 if clear and convincing evidence indicates that the accident was caused by a driver who, within the five years immediately preceding the accident has been convicted for violation of section 39-08-01 and who was operating or in physical control of a motor vehicle:
  - a. With an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight;
  - b. Under the influence of a controlled substance unless a drug that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to the driver;
  - c. Under the influence of alcohol and refused to take a test required under chapter 39-20; or
  - d. Under the influence of a volatile chemical as listed in section 19-03.1-22.1.

At the trial in an action in which the trier of fact will consider an award of exemplary damages, evidence that the driver has been convicted of violating section 39-08-01 or an equivalent statute or ordinance is admissible into evidence.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 286****HOUSE BILL NO. 1205**  
(Representatives Keiser, Wald)  
(Senator Klein)

AN ACT to create and enact chapter 32-03.4 of the North Dakota Century Code, relating to the transfer of structured settlements; and to provide a penalty.

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

**SECTION 1.** Chapter 32-03.4 of the North Dakota Century Code is created and enacted as follows:

**32-03.4-01. Definitions.** For purposes of this chapter:

1. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
2. "Dependent" includes a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony or support.
3. "Discounted present value" means the present value of future payments determined by discounting those payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.
4. "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.
5. "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser:
  - a. Who is engaged by a claimant or payee to render advice concerning the legal, tax, and financial implications of a structured settlement or a transfer of structured settlement payment rights;
  - b. Who is not in any manner affiliated with or compensated by the defendant in the settlement or the transferee of the transfer; and
  - c. Whose compensation for rendering the advice is not affected by whether a settlement or transfer occurs or does not occur.
6. "Interested party" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement.

7. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subsection 5 of section 32-03.4-02.
8. "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights under the structured settlement.
9. "Periodic payments" includes both recurring payments and scheduled future lump sum payments.
10. "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code [26 U.S.C. 130], as amended.
11. "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.
12. "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.
13. "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.
14. "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.
15. "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if at least one of the following applies:
  - a. The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state;
  - b. The structured settlement agreement was approved by a court in this state; or
  - c. The structured settlement agreement is expressly governed by the laws of this state.
16. "Terms of the structured settlement" includes, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other governmental authority that authorized or approved such structured settlement.
17. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. The term does not include the creation or perfection of a security interest in structured settlement

payment rights under a blanket security agreement entered with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

18. "Transfer agreement" means the agreement that provides for a transfer of structured settlement payment rights.
19. "Transfer expenses" means all expenses of a transfer which are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney's fees, escrow fees, lien recordation fees, judgment and lien search fees, finder's fees, commissions, and other payments to a broker or other intermediary. The term does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.
20. "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

**32-03.4-02. Required disclosures to payee.** At least three days before the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold and in at least fourteen-point type, setting forth:

1. The amounts and due dates of the structured settlement payments to be transferred;
2. The aggregate amount of the payments;
3. The discounted present value of the payments to be transferred, which must be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for 'valuing annuities'", and the amount of the applicable federal rate used in calculating the discounted present value;
4. The gross advance amount;
5. An itemized list of all applicable transfer expenses, other than attorney's fees and related disbursements, payable in connection with the transferee's application for approval of the transfer and the transferee's best estimate of the amount of any such fees and disbursements;
6. The net advance amount;
7. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
8. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, no later than the third business day after the date the agreement is signed by the payee.

**32-03.4-03. Approval of transfers of structured settlement payment rights.** A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer may not be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on the following express findings by the court:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable. If the court makes the findings as outlined in this subsection, there is not a requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this subsection;
2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived the advice in writing; and
3. The transfer does not contravene any applicable statute or the order of any court or other governmental authority.

**32-03.4-04. Effects of transfer of structured settlement payment rights.** Following a transfer of structured settlement payment rights under this chapter:

1. The structured settlement obligor and the annuity issuer are discharged and released from all liability for the transferred payments as to all parties except the transferee;
2. The transferee is liable to the structured settlement obligor and the annuity issuer:
  - a. If the transfer contravenes the terms of the structured settlement, for any taxes incurred by those parties as a consequence of the transfer; and
  - b. For any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this chapter;
3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and
4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

**32-03.4-05. Procedure for approval of transfers.**

1. An application for approval of a transfer of structured settlement payment rights under this chapter must be made by the transferee and may be brought in the county in which the payee resides, in the county

in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court that approved the structured settlement agreement.

2. At least twenty days before the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 32-03.4-03, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The notice must include:
  - a. A copy of the transferee's application;
  - b. A copy of the transfer agreement;
  - c. A copy of the disclosure statement required under section 32-03.4-02;
  - d. A list of each of the payee's dependents and each dependent's age;
  - e. Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing;
  - f. Notification of the time and place of the hearing; and
  - g. Notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court, which may be not less than fifteen days after service of the transferee's notice.

**32-03.4-06. No waiver by payee.** The requirements of this chapter may not be waived by any payee.

**32-03.4-07. Disputes decided under state law.** Any transfer agreement entered on or after the effective date of this chapter by a payee who resides in this state must provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, must be determined in and under the laws of this state. Such a transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

**32-03.4-08. Life-contingent payments not to be transferred - Exception.** A transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

**32-03.4-09. No payee liability for failure to comply with chapter.** A payee who proposes to make a transfer of structured settlement payment rights may not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.

**32-03.4-10. Effect of chapter on existing laws and transfer agreements.**

This chapter does not authorize any transfer of structured settlement payment rights in contravention of any law nor does this chapter imply that any transfer under a transfer agreement entered before August 1, 2009, is valid or invalid.

**32-03.4-11. Transferee solely responsible for certain requirements.**

In any transfer of structured settlement payment rights, compliance with the requirements of section 32-03.4-02 and fulfillment of the conditions of section 32-03.4-03 are the sole responsibility of the transferee. Neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with those requirements or failure to fulfill those conditions.

**32-03.4-12. Penalty.** Any transferee that willfully violates this chapter is guilty of an infraction. A second or subsequent violation of this chapter is a class B misdemeanor.

**32-03.4-13. Applicability of chapter.** This chapter applies to any transfer of structured settlement payment rights under a transfer agreement entered after July 31, 2009. This chapter does not imply that any transfer under a transfer agreement reached before August 1, 2009, is either effective or ineffective.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 287****HOUSE BILL NO. 1104**

(Judiciary Committee)

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

AN ACT to amend and reenact subsection 1 of section 32-12.2-11 of the North Dakota Century Code, relating to exempt records.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 32-12.2-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The following records in the possession of the office of management and budget or a public entity are privileged and exempt and are not subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota:
  - a. Records containing information relating to that portion of the funds or liability reserves of the risk management fund established for the purpose of satisfying a specific pending or reasonably predictable claim against the state or a state employee; and
  - b. Incident reports, investigation reports, or other risk management fund records of a pending or reasonably predictable claim against the state or a state employee.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 288****SENATE BILL NO. 2256**

(Senators Fischer, G. Lee, J. Lee, Miller)  
(Representatives Kasper, Nelson, Nottestad)

AN ACT to amend and reenact section 32-12.2-13 of the North Dakota Century Code, relating to contracts between the state and a political subdivision; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 32-12.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**32-12.2-13. Contract between the state and a political subdivision.** A contract between the state and a political subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party; ~~unless the agreement is entered into in good faith and is set forth in a separate writing signed by both parties and supported by adequate consideration which must be stated in the agreement.~~

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 289****HOUSE BILL NO. 1122**

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-12.2-15 of the North Dakota Century Code, relating to authorization of agencies to limit the liability to the state of certain contracting parties.

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

**SECTION 1. AMENDMENT.** Section 32-12.2-15 of the North Dakota Century Code is amended and reenacted as follows:

**32-12.2-15. Contracts limiting liability to the state - Assumption of certain excess liability by the risk management fund.** Notwithstanding any provision in this chapter to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, an agency may agree to limit the liability of a contractor to the state. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing and may only be approved for contracts for the purchase or lease of, or services related to, software, communication, or electronic equipment. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation. Contracts for economic forecasting for the office of management and budget may contain a provision limiting the state's ability to seek and recover indirect consequential damages if the director of the office of management and budget and the attorney general determine that such services cannot be effectively obtained without such limitation and that the limitation does not pose any significant risk of loss to the state and is in the best interests of the state. A contract under this section may not limit any direct loss to the state or loss resulting from property damage or personal injury.

Approved March 19, 2009

Filed March 24, 2009

## CHAPTER 290

### HOUSE BILL NO. 1430

(Representatives Thoreson, DeKrey, Klemin, Koppelman)  
(Senators Dotzenrod, Nething)

AN ACT to create and enact chapter 32-46 of the North Dakota Century Code, relating to successor corporation asbestos-related liabilities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 32-46 of the North Dakota Century Code is created and enacted as follows:

**32-46-01. Definitions.** As used in this chapter:

1. "Asbestos claim" means a claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:
  - a. The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;
  - b. A claim made by or on behalf of a person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and
  - c. A claim for damage or loss caused by the installation, presence, or removal of asbestos.
2. "Corporation" means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state.
3. "Innocent successor" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors.
4. "Successor asbestos-related liabilities" means a liability, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which is related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that is related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 32-46-04, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged,

by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

5. "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

#### **32-46-02. Applicability.**

1. The limitations in section 32-46-03 apply to an innocent successor corporation.
2. The limitations of section 32-46-03 do not apply to:
  - a. Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of title 65, or a comparable workers' compensation law of another jurisdiction;
  - b. A claim against a corporation that does not constitute a successor asbestos-related liability; or
  - c. An obligation under the National Labor Relations Act, 29 U.S.C. 151 et seq., or under a collective bargaining agreement.

#### **32-46-03. Measure of liabilities.**

1. Except as further limited in subsection 2, the cumulative successor asbestos-related liabilities of an innocent successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The innocent successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.
2. If the transferor had assumed or incurred successor asbestos-related liabilities or liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation must be substituted for the limitation set forth in subsection 1 for purposes of determining the limitation of liability of an innocent successor corporation.

#### **32-46-04. Establishing fair market value of total gross assets.**

1. An innocent successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 32-46-03 through any method reasonable under the circumstances, including:
  - a. By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or
  - b. In the absence of other readily available information from which the fair market value may be determined, by reference to the value of the assets recorded on a balance sheet.

2. Total gross assets include intangible assets.
3. To the extent total gross assets include liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of the insurance are not affected by this chapter, nor does this chapter otherwise affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning the liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this Act are determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

#### **32-46-05. Adjustment.**

1. Except as provided in subsections 2 through 4 of this section, the fair market value of total gross assets at the time of the merger or consolidation increases annually at a rate equal to the sum of:
  - a. The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and
  - b. One percent.
2. The rate found in subsection 1 may not be compounded.
3. The adjustment of the fair market value of total gross assets continues as provided in subsection 1 until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the innocent successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.
4. An adjustment of the fair market value of total gross assets may not be applied to any liability insurance that may be included in the definition of total gross assets by subsection 3 of section 32-46-04.

**32-46-06. Scope of chapter.** This chapter applies to all asbestos claims filed against an innocent successor on or after the effective date of this Act. This chapter also applies to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date, except that any provisions of these sections which would be unconstitutional if applied retroactively must be applied prospectively.

Approved March 24, 2009

Filed March 24, 2009

# LABOR AND EMPLOYMENT

## CHAPTER 291

### SENATE BILL NO. 2267

(Senator Holmberg)

AN ACT to amend and reenact section 34-11.1-04 of the North Dakota Century Code, relating to whistleblower protection for public employees; and to provide for a legislative council study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information - Labor department.**

1. An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. The job-related misuse of public resources.
2. For having made a report under subsection 1, no employee will:
  - a. Be dismissed from employment.
  - b. Have salary increases or employment-related benefits withheld.
  - c. Be transferred or reassigned.
  - d. Be denied a promotion that the employee otherwise would have received.
  - e. Be demoted.
  - f. Be discriminated against in any term or condition of employment.
3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee ~~dismissed under this subsection~~ claiming reprisal under this section may appeal first to the state personnel board human resource management services division and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and

then to district court if the employee is not under the jurisdiction of the ~~state personnel board~~ human resource management services division.

4. The labor department shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. To receive assistance from the labor department, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the labor department under this subsection before proceeding under other provisions of this section.
5. An employee of the state may appeal a claim of reprisal under this section in the manner prescribed for a classified employee under chapter 54-44.3. This subsection does not apply to an employee under the jurisdiction of the state board of higher education or the judicial branch of government.

## **SECTION 2. LEGISLATIVE COUNCIL STUDY - WHISTLEBLOWER LAWS.**

During the 2009-10 interim, the legislative council shall consider studying the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 1, 2009

Filed May 5, 2009

**CHAPTER 292****HOUSE BILL NO. 1099**

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

AN ACT to amend and reenact section 34-14-09 of the North Dakota Century Code, relating to employees' remedies and the limitations on wages collectible.

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

**SECTION 1. AMENDMENT.** Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

**34-14-09. Employees' remedies - Limitation on wages collectible.** An employee may file a claim for wages due under this chapter or under chapter 34-06 with the department not later than two years from the date the wages are due. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. Whenever the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.

Approved March 19, 2009  
Filed March 24, 2009

VOLUME II  
CHAPTERS 293 THROUGH 707

# LAWS

PASSED AT  
**The Sixty-first Session**  
OF THE  
**Legislative Assembly**  
OF THE  
STATE OF NORTH DAKOTA

BEGUN AND HELD AT BISMARCK, THE CAPITAL, ON  
TUESDAY, JANUARY 6, 2009, AND  
CONCLUDING MONDAY, MAY 4, 2009



# AUTHENTICATION

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## STATE OF NORTH DAKOTA Department of State, Bismarck

I, Alvin A. Jaeger, Secretary of State, certify that the laws contained herein are true and correct copies, except clerical errors, of the laws and resolutions passed at the Sixty-first Session of the Legislative Assembly of the State of North Dakota, beginning Tuesday, January 6, 2009, and concluding Monday, May 4, 2009, and also of the constitutional amendments submitted at the primary election held June 10, 2008; and the initiated measure submitted at the general election held November 4, 2008.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Dakota, this first day of July 2009.

(SEAL)

ALVIN A. JAEGER  
Secretary of State

Jim W. Smith, John Walstad, and Jeffrey N. Nelson of the Legislative Council certify that we have prepared the contents of these volumes and that the measures, laws, and resolutions contained herein are true and correct copies of the original measures, laws, and resolutions on file in the office of the Secretary of State in the State Capitol at Bismarck, North Dakota, clerical errors excepted.

JIM W. SMITH  
JOHN WALSTAD  
JEFFREY N. NELSON



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# LIENS

## CHAPTER 293

### SENATE BILL NO. 2250

(Senators Holmberg, Triplett)

AN ACT to create and enact a new section to chapter 35-27 of the North Dakota Century Code, relating to attorney's fees under construction liens; to amend and reenact sections 28-01-17, 28-05-09, 35-15-06, 35-21-01, 35-27-02, 35-27-04, 35-27-13, 35-27-14, 35-27-16, 35-27-18, 35-27-22, 35-27-24, 35-27-25, and 47-18-04 of the North Dakota Century Code, relating to mechanic's and construction liens; and to repeal sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code, relating to outdated mechanic's lien provisions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 28-01-17 of the North Dakota Century Code is amended and reenacted as follows:

**28-01-17. Actions having three-year limitations - Exceptions.** The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff or coroner upon a liability incurred by the doing of an act in the sheriff's or coroner's official capacity and by virtue of that office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a ~~mechanic's~~ construction lien.

**SECTION 2. AMENDMENT.** Section 28-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**28-05-09. When lis pendens not required.** ~~No~~ A notice of the pendency of an action in a district court is not required if the action is for the foreclosure of a mortgage or for the enforcement of a ~~mechanic's~~ construction lien or miner's lien.

**SECTION 3. AMENDMENT.** Section 35-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**35-15-06. Foreclosure - When lienholders joined in action.** Any person holding a miner's lien may foreclose the same in the same manner as a ~~mechanic's~~ construction lien may be foreclosed. In an action for the foreclosure of such lien, ~~all persons each person~~ claiming ~~liens~~ a lien upon the property charged must be made

parties a party to the action, and the rights of all parties must be determined by the court and such order made in regard thereto as shall preserve and protect the rights of all parties.

**SECTION 4. AMENDMENT.** Section 35-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-21-01. Release of lien by undertaking authorized.** When any ~~mechanic's construction~~ lien, garage storage lien, repairman's lien, agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

**SECTION 5. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-02. Persons entitled to ~~mechanic's construction~~ lien - Notice.** Any person ~~who that~~ improves real estate ~~by the contribution of labor, skill, or materials~~, whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which ~~it the improvement~~ is situated or to which ~~it the improvement~~ may be removed for the price or value of such contribution. Provided, however, that the amount of the lien is only for the difference between the price paid by the owner or agent and the price or value of the contribution. If the owner or agent has paid the full price or value of the contribution, no lien is allowed. Provided further that if the owner or an agent of the owner has received a waiver of lien signed by the person ~~who that~~ improves the real estate ~~by the contribution of labor, skill, or materials~~, ~~no a~~ lien is not allowed.

Any person ~~who that~~ extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, ~~shall~~, upon demand, ~~have has~~ the right to request and secure evidence of the legal description of the real estate upon which the improvement is located, including the name of the title owner of the real estate. Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien.

**SECTION 6. AMENDMENT.** Section 35-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-04. When lien attaches - Exception - Notice - Filing.** As against a mortgage given in good faith for the purpose of providing funds for the payment of materials or labor for the improvement, ~~no such a~~ lien may not be preferred to ~~such mortgage~~ even though such mortgage is recorded ~~subsequent to after~~ the time the first item of material or labor is furnished upon the premises, or ~~subsequent to after~~ the actual visible beginning of the improvement unless the person furnishing such labor, skill, or material for such improvement ~~shall, prior to before~~ the recording of such mortgage, file files for record a notice of the person's intention to claim a mechanic's construction lien pursuant to the provisions of section 35-27-05.

**SECTION 7. AMENDMENT.** Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-13. How lien perfected - ~~Mechanic's Construction~~ lien recorded.** Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days

after all the person's contribution is done, and having complied with the provisions of this chapter, a mechanic's lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted.

**SECTION 8. AMENDMENT.** Section 35-27-14 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-14. Lien not lost for failure to file within time - Exception.** A failure to file the lien account within ninety days does not defeat the lien except as against purchasers or encumbrancers in good faith and for value whose rights accrue after the ninety days and before any claim for the lien is filed, and as against the owner to the extent of the amount paid to a contractor after the expiration of the ninety days and before the filing recording of the account lien. A lien may not be filed more than three years after the date of the first item of material is furnished.

**SECTION 9. AMENDMENT.** Section 35-27-16 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-16. Inaccuracies in lien statement.** ~~In no case may the liens~~ A lien given by this chapter ~~be is not~~ affected by any inaccuracy in the particulars of the lien ~~account,~~ but, as against all persons except the owner of the property, the lien claimant must be concluded by the dates therein given, showing the first and last items of the claimant's account. ~~In no case may a~~ A lien may not exist for a greater amount than the sum claimed in the lien ~~account,~~ nor for any amount, if it be made to appear that the claimant has knowingly demanded ~~in the statement~~ more than is justly due.

**SECTION 10. AMENDMENT.** Section 35-27-18 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-18. Mechanic's Construction lien on railway contracts obtainable.** Every person ~~who~~ that furnishes any labor, skill, or material for constructing, altering, or repairing any line of railway, or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, or the owner's agent, contractor, or subcontractor authorized in writing to contract for the owner, has a lien upon such line of railway and the right of way ~~thereof of such railway,~~ and upon all bridges, depots, offices, and other structures appertaining to the line of railway, and all franchises, privileges, and immunities granted to the owner of the line of railway for the construction and operation thereof, to secure the payment for the labor, skill, and materials, upon filing recording a statement of the person's demand therefor in accordance with the provisions of section 35-27-13 lien, within ninety days from the last day of the month in which the labor or material was furnished, but a failure to ~~file the same record~~ file the same record within the time aforesaid ninety days does not defeat the lien except to the extent specified in section 35-27-14.

**SECTION 11. AMENDMENT.** Section 35-27-22 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-22. Order of priority of classes of mechanics' construction liens.**

1. Liens perfected under ~~the provisions~~ of this chapter have priority in the following order:
4. a. For manual labor.

2. b. For materials.
  3. c. Subcontractors other than manual laborers.
  4. d. Original contractors.
2. Liens for manual labor filed within the ninety-day period must share ratably in the security. Liens for manual labor filed ~~thereafter~~ after the ninety-day period have priority in the order of the filing of such liens. Liens for materials filed within the ninety-day period must share ratably in the security and ~~such~~ liens filed ~~thereafter~~ after the ninety-day period have priority in the order of the filing of such liens.

**SECTION 12. AMENDMENT.** Section 35-27-24 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-24. Action to enforce mechanic's construction lien - Notice of - Deficiency judgment.** Any person having a lien by virtue of this chapter may bring an action to enforce the lien in the district court of the county in which the property is situated. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced the court may consolidate ~~them~~ the actions. Before a lienholder may enforce a lien, the lienholder shall give written notice of the lienholder's intention so to do, which notice must be given by personal service upon the record owner of the property affected at least ten days before an action to enforce the lien is commenced, or by registered mail directed to the owner's last-known address at least twenty days before the action is commenced. The judgment may direct that in the event that a deficiency remains after the sale of the real ~~or personal~~ property subject to the lien an execution may issue for such deficiency.

**SECTION 13.** A new section to chapter 35-27 of the North Dakota Century Code is created and enacted as follows:

**Costs and attorney's fees.** Any owner that successfully contests the validity or accuracy of a construction lien by any action in district court must be awarded the full amount of all costs and reasonable attorney's fees incurred by the owner.

**SECTION 14. AMENDMENT.** Section 35-27-25 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-25. Requiring suit to be commenced - Demand - Limitations of action.** Upon written demand of the owner, that person's agent, or contractor, served on the person holding the lien, suit must be commenced and filed with the clerk of court within thirty days thereafter or the lien is forfeited. The demand must contain a provision informing the person holding the lien that if suit is not commenced within thirty days, the person holding the lien forfeits the lien. ~~No~~ A lien is not valid or effective as such, nor may be enforced in any case, unless the holder ~~thereof~~ of the lien asserts the same by complaint filed with the clerk of court within three years after the date of recording of the ~~verified notice of intention to claim a mechanic's~~ verified notice of intention to claim a lien. If a summons and complaint asserting the validity of the lien is not filed in the office of the clerk of court of the county in which the lien is recorded within the limitations provided by this section, the lien is deemed satisfied and the clerk of court ~~shall~~, upon request of any interested person, shall certify to the recorder that no summons and complaint has been filed and the lien is deemed satisfied under this section, who then shall record the verified certificate.

<sup>125</sup> **SECTION 15. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-04. When homestead subject to execution.** A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics', construction, or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.
3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of said homestead is more than eighty thousand dollars over and above liens or encumbrances ~~thereon~~ on the homestead, and then only to the extent of any value in excess of the sum total of such liens and encumbrances plus said eighty thousand dollars.

**SECTION 16. REPEAL.** Sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code are repealed.

Approved April 28, 2009  
Filed May 1, 2009

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<sup>125</sup> Section 47-18-04 was also amended by section 9 of House Bill No. 1039, chapter 276.

**CHAPTER 294****HOUSE BILL NO. 1229**

(Representatives Martinson, Karls, Keiser, Weiler)

AN ACT to create and enact a new chapter to title 35 of the North Dakota Century Code, relating to a lien on property stored in a portable storage unit.

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

**SECTION 1.** A new chapter to title 35 of the North Dakota Century Code is created and enacted as follows:

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

1. "Default" means failure of the lessee to pay the rent and other charges at the time and in the manner set forth in the rental agreement.
2. "Last-known address" means the address provided by the lessee in the latest rental agreement or the address provided by the lessee in a subsequent written change of address notice.
3. "Lessee" means a person who leases a portable storage unit, regardless of the unit's location, under a rental agreement. The term includes a sublessee, successor, and assignee.
4. "Owner" means a person who owns, leases, subleases, manages, or operates a portable storage unit and receives rent from a lessee under a rental agreement.
5. "Personal property" means movable property not affixed to land, including merchandise and household goods.
6. "Portable storage unit" includes a portable container, overseas shipping container, or semitrailer which may be moved by the owner to a location designated by the lessee or moved by the lessee to one of several locations, in accordance with the rental agreement, and in which the lessee customarily stores and removes personal property.
7. "Rental agreement" means a written agreement between the owner and the lessee which establishes or modifies the terms and conditions of the lessee's use of the portable storage unit.

**Lien against property.** The owner of a portable storage unit has a lien on all personal property stored under a rental agreement in a portable storage unit for rent, labor, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default served on the occupant as provided in this chapter.

**Custody and control of property.** Unless the rental agreement provides otherwise, until a sale under this chapter, the lessee is responsible for the care,

custody, and control of all property stored in the portable storage unit unless the owner secures the property elsewhere during the sale proceedings.

**Notice of proceedings.**

1. Before conducting a sale, the owner shall deliver in person or send by certified mail a notice of default to prior lienholders and to the lessee at the lessee's last-known address. A notice under this section is presumed delivered if the notice is deposited with the United States postal service and properly addressed with postage prepaid. The notice must include:
  - a. A statement that the contents of the portable storage unit are subject to the owner's lien and that the lessee is denied access to the portable storage unit until the owner's claim is satisfied;
  - b. The name of the lessee and the address at which the portable storage unit is located;
  - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, which may not be fewer than ten days after the date of the notice;
  - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the portable storage unit will be sold; and
  - e. The name, address, and telephone number of the owner or other person that the lessee may contact in response to the notice.
2. In addition to the requirements of subsection 1, an owner shall also publish, once a week for two consecutive weeks, with the first publication not more than thirty days before the sale and the last publication at least seven days before the sale, the time, place, and terms of the sale in a newspaper of general circulation in the county where the portable storage unit is located.

**Sale of property - Application of proceeds.** At any time before the sale, the lessee may pay the amount necessary to satisfy the lien and redeem the lessee's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the lessee or any other recorded lienholder for a period of six months from the date of sale. Any amount not claimed by the lessee from the owner within the six-month period is subject to the reporting requirements of section 47-30.1-08.

**Protection of purchaser in good faith.** A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, subject to the rights of prior lienholders.

**Liability of owner.** If the owner complies with this chapter, the owner's liability to the lessee is limited to the application of the proceeds received from the sale of the property necessary to satisfy the lien. The owner's liability to other lienholders is limited to the proceeds received from the sale of any property covered by the other lien, less the amount necessary to satisfy the owner's lien.

**Validity of certain rental agreements.** Any rental agreement entered before August 1, 2009, remains valid and may be enforced or terminated in accordance with its terms or as permitted by law.

**Sale proceedings - Titled vehicles.** The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority to obtain a transfer of title to vehicles under section 39-05-19. However, the rights of a prior listed lienholder are not affected by this transfer and the department may not remove a prior lienholder in this transfer of title without a release from the lienholder.

Approved April 21, 2009

Filed April 22, 2009

## CHAPTER 295

### SENATE BILL NO. 2404 (Senators Miller, O'Connell, Wardner) (Representatives S. Meyer, Rust, Weiler)

AN ACT to provide a lien for oil and gas owners to secure payment for the sale of oil and gas.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

##### **SECTION 1. Definitions. As used in this Act:**

1. "First purchaser" means the first person who purchases oil or gas from an interest owner at or after the time the oil or gas is severed.
2. "Interest owner" means a person owning an entire or fractional interest of any kind or nature in the oil or gas at the time it is severed, or a person who has a right, either express or implied, to receive a monetary payment determined by the value of the oil or gas severed.
3. "Operator" means a person engaged in the severance of oil or gas.
4. "Purchaser" means a person who purchases oil or gas from a first purchaser.
5. "Severed" means the taking, extraction, or production from the land of oil or gas in any manner.

##### **SECTION 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary course of business.**

1. To secure payment from the sale of oil or gas, an interest owner, subject to section 4 of this Act, has a continuing security interest in and a lien on the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.
2. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien do not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which that person in good faith believes to be due and payable.
3. A security interest or lien claimed pursuant to this Act is not effective against an interest owner, operator, first purchaser, or purchaser until a copy of the notice of lien required to be filed under section 4 of this Act has been delivered to the interest owner, operator, first purchaser, or purchaser by registered mail.
4. Notwithstanding any other provision in this Act to the contrary, a person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding

purchases from the well or to one who is authorized to receive payment on behalf of or for the interest owner is deemed a buyer in the ordinary course of business and takes the oil or gas free of the security interest and lien granted to the interest owner by this Act, and the first purchaser or purchaser who makes the payment and all its property is free from and not subject to the security interest or lien granted to the interest owner by this Act.

**SECTION 3. Validity of lien.** The validity of the security interest and lien granted to an interest owner under this Act is not dependent upon possession of the oil or gas by an interest owner or operator and a security interest or lien does not become or may not be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

**SECTION 4. Perfection of lien - Verified notice - Effect of instruments - Effective date of lien.**

1. If the proceeds for oil or gas which are required to be paid are not paid to the interest owner when due, the interest owner may perfect the security interest and lien by filing a form UCC-1A in the central indexing system and recording the lien in the real estate records in the office of the county recorder of the county in which the well is located. If the oil and gas owner's lien is not filed within ninety days from the date of production, the security interest is not perfected and does not give the interest owner priority over a perfected security interest in the same oil, gas, or proceeds of the oil or gas.
2. All instruments that are presented to a county recorder for filing in accordance with subsection 1 are effective as financing statements even though the signature of the debtor may not appear on the lien. Liens must be filed in the central indexing system and recorded in the real estate records of the county. Liens may be terminated in the same manner as financing statements.
3. Upon perfection by filing, the security interest and lien of the interest owner takes priority over the rights of all persons whose rights or claims arise or attach thereafter to the oil or gas unpaid for, or the proceeds of oil or gas if the oil or gas has been sold, including those that arise or attach between the time the security interest and lien attaches and the time of filing. The security interest and lien created pursuant to this Act do not have priority over the security interest and lien rights previously created and perfected or an operating agreement or other voluntary agreement for the development and operation of the property.

**SECTION 5. Rights of first purchasers.** Neither this Act nor the filing of a lien permitted under this Act affects the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser or the ownership of the oil and gas before severed as reflected by the records affecting real property or the right of a first purchaser to take or receive oil and gas under the terms of a division order or similar agreement for the sale and purchase of oil or gas. Notwithstanding this Act, a first purchaser or purchaser is free to transport products out of the state and to sell the products without permission or release of lien.

**SECTION 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs - Personal actions - Other rights and remedies.**

1. The security interest and lien granted to an interest owner follow the oil and gas unpaid for or the proceeds of the oil or gas if the oil or gas has been sold. The security interest and lien expire one year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within such time in the district court of the county in which the well is located, or wherever the oil or gas unpaid for or the proceeds of oil or gas sold may be found. Persons claiming security interests and liens with respect to the oil or gas from the same well may join in the same action, and where separate actions are commenced the court may consolidate them. The court may allow as part of the costs of the action moneys paid for filing and recording instruments and reasonable attorney's fees for the prevailing party. If an action is commenced after the filing of a lien, the lien is considered a lien upon the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest of the claimant, for payment of the amount due the claimant and the security interest and lien of the claimant may be enforced in the manner provided by law.
2. This Act does not impair or affect the right of a person to whom a debt may be due to maintain a personal action to recover the debt against the person liable for payment of the debt.
3. This Act does not impair or affect the rights, priorities, or remedies of a person under the Uniform Commercial Code and this Act is cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against the creditor's debtor.

Approved April 22, 2009  
Filed April 23, 2009

# LIVESTOCK

## CHAPTER 296

### HOUSE BILL NO. 1326

(Representatives Berg, Brandenburg, Froelich, D. Johnson)  
(Senators Taylor, Wanzek)

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to requested certification by livestock producers and processors; and to provide a continuing appropriation.

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

**SECTION 1.** A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

#### **State board of animal health - Certification of livestock - Fees - Continuing appropriation.**

1. a. At the request of a livestock producer, the board shall provide inspection and verification services for the purpose of certifying that livestock have been or are being raised according to standards and protocols articulated by the producer.
- b. At the request of a livestock processor, the board shall provide inspection and verification services for the purpose of certifying that the meat products and manner of processing meet or exceed standards, descriptions, or specifications articulated by the processor.
- c. The board shall determine the nature and scope of the inspection and verification services necessary to provide the certification requested under this subsection.
2. The board may establish and charge fees for the requested services. The board shall forward all moneys received under this section to the state treasurer for deposit in the agriculture commissioner's operating fund.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 297****HOUSE BILL NO. 1491**  
(Representatives D. Johnson, S. Meyer)  
(Senators Erbele, Klein)

AN ACT to amend and reenact sections 36-09-17, 36-09-20, 36-09-20.1, 36-09-22, and 36-09-23 of the North Dakota Century Code, relating to penalties imposed for violation of brand laws.

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

**SECTION 1. AMENDMENT.** Section 36-09-17 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-17. Defacing brands and unlawfully branding - Penalty.** Any A person ~~who shall:~~

- ~~4. Alter or deface, or attempt is guilty of a class A misdemeanor for a first offense and a class C felony for a second or subsequent offense if the person:~~
  - ~~1. Alters, defaces, or attempts to alter or deface, the mark or brand upon on any animal; the property of owned by another for the purpose of deceiving others as to the animal's ownership; or~~
  - ~~2. Willfully and unlawfully mark or brand, or cause marks, brands, or causes to be marked or branded; any animal; the property of owned by another; is guilty of a class A misdemeanor for the purpose of deceiving others as to the animal's ownership.~~

**SECTION 2. AMENDMENT.** Section 36-09-20 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.**

1. A person may not sell cattle, horses, mules, or any other livestock carrying a registered brand unless:
  - a. The seller is the owner of the registered brand and delivers a bill of sale for the cattle, horses, mules, or other livestock to the purchaser; or
  - b. The seller delivers to the purchaser a bill of sale executed by the owner of the registered brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must include:
  - a. The date;
  - b. The name, address, and signature of the seller;

- c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
  - d. The name and address of the buyer;
  - e. The total number of animals sold;
  - f. A description of each animal sold as to sex and kind; and
  - g. A description of the registered brands.
3. The bill of sale must be kept by the buyer for two years and as long thereafter as the buyer owns any of the animals described in the bill of sale.
  4. A copy of the bill of sale must be given to each hauler of the livestock, other than railroads, and must go with the shipment of the livestock while in transit.
  5. The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any peace officer or brand inspector.
  6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.
  7. A bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection.
  8. Any person ~~who~~ who that willfully violates this section is guilty of ~~an infraction~~ a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

**SECTION 3. AMENDMENT.** Section 36-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-20.1. False proof of ownership - Sale of livestock - Penalty.** A person that ~~knowingly~~ willfully provides false proof of ownership in conjunction with the sale of livestock is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

**SECTION 4. AMENDMENT.** Section 36-09-22 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-22. Sale of animal under false registration ~~certificates~~ certificate - Changing marking - ~~Auctioneer~~ - Penalty.** ~~No~~

1. A person may not willfully:
  4. a. Sell ~~any an~~ animal with a certificate of registration or breeding that the person knows does not belong to ~~said~~ the animal.
  2. b. ~~Change in any way the~~ Alter any animal's certificate of registration or breeding ~~of any animal.~~

3. ~~c. Falsely represent~~ Misrepresent any production record specified in ~~any a~~ registration certificate.
4. ~~d. Change the markings of any animals~~ animal with intent to deceive the purchaser ~~or misrepresent.~~
  - e. Misrepresent the sire to which such animal has been bred.

The provisions of this section do not apply to any auctioneer or agent acting in good faith under the direction of the owner.

Any

2. ~~A person who that violates any of the provisions of this section is guilty of a class B A misdemeanor for a first offense and a class C felony for a second or subsequent offense.~~

**SECTION 5. AMENDMENT.** Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-23. Removal Transportation of livestock from state - Brand inspection - Penalty.**

1. ~~No A person may remove not transport or attempt to transport cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a. A certificate of inspection must accompany the livestock to its destination. This subsection does not apply to a person that:~~
  - a. Transports cattle, horses, or mules from this state to obtain for the animals emergency medical treatment by a licensed veterinarian; or
  - b. Transports cattle, horses, or mules from this state to an auction market that is located in a bordering state and which has been designated by rule as an official brand inspection market.
2. ~~It is unlawful for the~~ The owner or possessor ~~to remove any of livestock may not remove the livestock~~ from any place of regular official brand inspection ~~unless and until an official brand inspection has been made and the brand inspection certificate has been issued.~~
3. A person ~~who that~~ willfully violates this section is guilty of a class ~~B A~~ misdemeanor. A person ~~who that~~ violates this section a second time within ~~fifteen~~ five years or violates this section three or more times is guilty of a class C felony.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 298

### HOUSE BILL NO. 1496

(Representative Froelich)  
(Senator Miller)

AN ACT to create and enact a new section to title 36 of the North Dakota Century Code, relating to an equine assessment; to provide for an equine processing facility feasibility study; to create an advisory committee; to provide an appropriation; to provide a continuing appropriation; and to provide for legislative intent.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to title 36 of the North Dakota Century Code is created and enacted as follows:

##### **Assessment - Continuing appropriation - Provision of grants.**

1. For each equine processed at an equine processing facility in this state, the owner of the facility shall submit to the agriculture commissioner, at the time and in the manner directed by the commissioner, an assessment in the amount of five dollars. The commissioner shall forward the assessment to the state treasurer for deposit in the equine processing fund.
2. All moneys in the equine processing fund are appropriated on a continuing basis to the agriculture commissioner to be used as follows:
  - a. The agriculture commissioner shall return to the state general fund the fifty thousand dollars appropriated to the department of commerce for the equine processing facility feasibility study.
  - b. Upon completion of the requirement set forth in subdivision a, the commissioner shall:
    - (1) Provide an annual grant equaling forty percent of any assessments collected to Dickinson state university in support of the equine management program;
    - (2) Provide an annual grant equaling forty percent of any assessments collected to North Dakota state university in support of the equine studies program; and
    - (3) Provide an annual grant equaling twenty percent of any assessments collected to public or private entities conducting equine research or offering hippotherapy to individuals with disabilities.

##### **SECTION 2. EQUINE PROCESSING FACILITY FEASIBILITY STUDY.**

1. During the 2009-10 interim, the department of commerce shall conduct an equine processing facility feasibility study. The study must begin

with a review of federal laws, regulations, policies, and guidelines regarding equine processing and an evaluation of the potential for amendments and modifications. If an equine processing facility is determined to be permissible under existing laws, the study may proceed to:

- a. Address the cost of constructing a new equine processing facility in this state;
  - b. Determine whether any existing structures could be converted to an equine processing facility and the cost of converting the structures;
  - c. Determine the nature and scope of existing and potential markets, both domestic and international, for equine meat and other byproducts of equine processing; and
  - d. Examine the potential for obtaining loans, grants, and other incentives in order to further the development of an equine processing facility.
2. The department shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. ADVISORY COMMITTEE - REIMBURSEMENT FOR EXPENSES.** The department of commerce may appoint a five-member committee to provide advice and guidance to the department regarding the feasibility study provided for in section 2 of this Act. The department may use up to \$5,000 of the amount appropriated under section 4 of this Act to provide reimbursement for expenses, as allowed by law for state officers, to any member of the advisory committee who does not serve on the committee by virtue of the individual's public office or public employment.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of conducting the equine processing facility feasibility study as provided under section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department may expend the moneys appropriated under this section only if matching funds are obtained on a dollar-for-dollar basis.

**SECTION 5. LEGISLATIVE INTENT - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION - CONSIDERATION OF GRANT PROPOSAL.** It is the intent of the legislative assembly that the agricultural products utilization commission consider making a grant available under section 4-14.1-03.1 to assist with the requirement for matching funds as provided under section 1 of this Act.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 299****HOUSE BILL NO. 1112**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 36-24-26 of the North Dakota Century Code, relating to penalties for violating meat inspection laws; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 36-24-26 of the North Dakota Century Code is amended and reenacted as follows:

**36-24-26. General penalty Penalties.** ~~Violation of this chapter or a rule adopted under this chapter is a class A misdemeanor. The commissioner is not required to report for prosecution or for the institution of injunctive proceedings a minor violation of this chapter if the commissioner believes that the public interest will be adequately served by a suitable written warning.~~

1. A person who violates a provision of this chapter is guilty of a class A misdemeanor.
2. A person willfully violating this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed two hundred fifty dollars for each violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative proceeding.
3. Imposing a penalty allowed in subsection 1 or 2 does not preclude the commissioner from seeking to impose other sanctions or from seeking other remedies for violation of this chapter or rules adopted under this chapter.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 300****HOUSE BILL NO. 1110**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to create and enact chapter 36-26 of the North Dakota Century Code, relating to feral swine; and to provide a penalty.

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

**SECTION 1.** Chapter 36-26 of the North Dakota Century Code is created and enacted as follows:

**36-26-01. Definitions.** As used in this chapter:

1. "Board" means the state board of animal health.
2. "Feral swine" means a hog, boar, or pig that:
  - a. Appears to be untamed or undomesticated;
  - b. Appears to have reverted from a domesticated to a wild state; and
  - c. Is freeroaming.

**36-26-02. Board - Authority.** The board is responsible for the control and eradication of feral swine on state lands and on private lands in this state.

**36-26-03. Prohibited actions.**

1. A person may not import, transport, or possess live feral swine.
2. A person may not intentionally, knowingly, or negligently allow swine to live in a feral state.
3. a. A person may not:
  - (1) Hunt or trap feral swine;
  - (2) Sponsor or promote the hunting or trapping of feral swine;
  - (3) Assist in the hunting or trapping of feral swine;
  - (4) Profit from the release of feral swine; or
  - (5) Profit from the hunting or trapping of feral swine.
- b. Paragraphs 1 through 3 of subdivision a do not apply to a state or federal agency or any person authorized by a state or federal agency to engage in the control or eradication of feral swine.

**36-26-04. Presence of feral swine - Notification of board - Immediate threat.**

1. Any person having reason to believe that feral swine are present on property owned by or legally occupied by that person shall notify the board and cooperate with the board in controlling or eradicating the feral swine.
2.
  - a. Notwithstanding any other provision of this chapter, if a person encounters a feral swine on property owned by or legally occupied by that person and determines that the feral swine poses a threat of harm or destruction of property, the person may immediately eradicate the feral swine.
  - b. Any person eradicating a swine under this subsection shall notify the board as soon as practicable, but in no event later than twenty-four hours after the time of the eradication. The person shall follow any instructions given by the board with respect to the handling of the carcass, preservation of the carcass for testing, and disposal of the carcass.

**36-26-05. Civil penalty.**

1. Any person violating section 36-26-03 is subject to:
  - a. A civil penalty in an amount not exceeding five thousand dollars per violation; and
  - b. A claim for the actual costs of control or eradication incurred by any state or federal government agency as a result of the person's violation.
2. Any person violating section 36-26-04 is subject to a civil penalty in an amount not exceeding two hundred fifty dollars for a first offense and a civil penalty in an amount not exceeding five thousand dollars for a subsequent offense.

Approved April 28, 2009  
Filed May 1, 2009

# MILITARY

## CHAPTER 301

### HOUSE BILL NO. 1138

(Education Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-07.1-02 and 37-07.2-01 of the North Dakota Century Code, relating to tuition waivers and grants for national guard members; and to repeal section 37-07.1-06.1 of the North Dakota Century Code, relating to the national guard tuition fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 37-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.1-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "School" means any university, college, career and technical education school, technical school, or postsecondary educational institution.
2. "State-controlled school" means any school which is controlled, financially supported, and operated by the state, a school district, or any other political subdivision.
3. "Tuition" means the normal registration fee. ~~It does not include graduation, activity, or incidental fees, book rental, laboratory, service, supply, union building, hospital and medical insurance fees, or any fees established for the operation and maintenance of buildings, the income of which is pledged for the payment of interest and principal on bonds issued by the governing board of any school.~~

**SECTION 2. AMENDMENT.** Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.2-01. National guard tuition grants - Terms of grants.** Any qualifying member of the national guard who enrolls in an accredited postsecondary institution in North Dakota may, subject to the limitations of available appropriated funds and subject to national guard rules adopted by the adjutant general, receive a grant in an amount ~~equal to the payments made pursuant to chapter 37-07.4~~ not to exceed the cost of tuition and fees for similar courses and credit hours for each qualifying member of the national guard who is enrolled at the university of North Dakota. Any accredited postsecondary institution that agrees to participate in such a program must waive twenty-five percent of the tuition for qualifying national guardsmen. These grants must be distributed according to rules promulgated by the adjutant general and are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. ~~As~~

~~used in this chapter, the word "tuition" has the same meaning as provided in section 37-07.1-02.~~

**SECTION 3. REPEAL.** Section 37-07.1-06.1 of the North Dakota Century Code is repealed.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 302****HOUSE BILL NO. 1057**

(Legislative Council)  
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 37-18 of the North Dakota Century Code, relating to department of veterans' affairs employees; to amend and reenact section 37-14-18 of the North Dakota Century Code, relating to county veterans' service officers; to provide for reports to the legislative council; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 37-14-18 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-18. County veterans' service officer - Appointment - Duties.** The board of county commissioners of each county of the state of North Dakota shall appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. The veterans' affairs commissioner may work directly with county veterans' service officers. An individual may serve as a county veterans' service officer in more than one county. The appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. By August 1, 2011, all county veterans' service officers must be accredited by the national association of county veterans' service officers. It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist such returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits. A county veterans' service officer may not serve as a conservator for an individual who is receiving benefits or services from the department of veterans' affairs or the United States department of veterans' affairs, except if the individual is the spouse or an immediate family member of the officer, or unless the conservator is appointed by the county under chapter 11-21.

**SECTION 2.** A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

**Department of veterans' affairs employees - Conservatorship activities prohibited.** An employee of the department of veterans' affairs may not serve as a conservator for an individual who is receiving benefits or services from the department, except if the individual is the spouse or an immediate family member of the employee.

**SECTION 3. DEPARTMENT OF VETERANS' AFFAIRS - TRAINING POSITIONS.** The commissioner of veterans' affairs may use up to two of the

department of veterans' affairs' existing full-time equivalent positions as training officers for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 4. REPORTS TO LEGISLATIVE COUNCIL.** By December 1, 2009, the commissioner of veterans' affairs shall provide to the legislative council a report regarding the number of county veterans' service officers accredited in accordance with the requirements of section 1 of this Act, the agency or organization through which each officer has been accredited, and an accountability report with respect to the use of the funds granted under section 5 of this Act for the training program offered through the department of veterans' affairs to county veterans' service officers. The commissioner shall present followup reports to the legislative council by July 1, 2010, and December 1, 2010. By December 1, 2010, the board of county commissioners of each county shall report to the legislative council the status of the county's compliance with section 1 of this Act.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of arranging for department of veterans' affairs accreditation training for all county veterans' service officers in the state, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 303****SENATE BILL NO. 2133**

(Government and Veterans Affairs Committee)  
(At the request of the Veterans' Home)

AN ACT to create and enact a new section to chapter 37-15 of the North Dakota Century Code, relating to telephone services at the veterans' home; and to amend and reenact sections 37-15-10 and 37-15-14.1 of the North Dakota Century Code, relating to admission to and fees paid by residents of the veterans' home.

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

**SECTION 1.** A new section to chapter 37-15 of the North Dakota Century Code is created and enacted as follows:

Telephone services. Notwithstanding any other provision of law, the veterans' home may purchase or arrange for independent third-party telephone services.

**SECTION 2. AMENDMENT.** Section 37-15-10 of the North Dakota Century Code is amended and reenacted as follows:

**37-15-10. Admittance to veterans' home - Requirements governing.**

1. An applicant may not be admitted to the veterans' home unless the applicant is a bona fide resident of this state preceding the applicant's application for admission. The residency requirement may be waived if the applicant served in a North Dakota regiment or was accredited to this state.
2. The spouse or surviving spouse of those mentioned in subsection 1 of section 37-15-02 may be admitted upon the same footing as the veteran.
3. An individual may not be admitted to the home until that individual has made formal application and furnished ~~such the proof as may be that is~~ required by the ~~administrative committee on veterans' affairs home~~ and the application has been approved by the board of admissions of the ~~institution that the committee has designated home~~.
4. When a member of the home who is not eligible for veterans' administration hospitalization and care becomes unable from any cause to care for oneself under rules adopted by the ~~administrative committee on veterans' affairs veterans' home governing board~~ for the admission and care of members in the home, the member becomes a charge of the county of residence at the time of admission. An individual may not gain or lose legal residence by reason of residence in or being a member of the veterans' home.

**SECTION 3. AMENDMENT.** Section 37-15-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**37-15-14.1. Membership contribution Fees for residents of veterans' home - Special fund.**

1. The ~~administrative committee on veterans' affairs~~ veterans' home governing board may establish a ~~membership contribution fees~~ membership contribution fees to be paid by members of the veterans' home. The ~~fee fees~~ fees must be based on the adjusted income of each member, but may not exceed forty-nine percent of the average daily per member cost. The ~~membership contribution fees~~ membership contribution fees must be set under a formula determined by the ~~administrative committee veterans' home governing board~~ veterans' home governing board and designed to assure dignity and equity in the charge. The ~~administrative committee veterans' home governing board~~ veterans' home governing board may reconsider its action establishing a ~~membership contribution fees~~ membership contribution fees, amend or rescind the ~~contribution charge fees~~ contribution charge fees, or reinstate a ~~contribution charge fees~~ contribution charge fees previously rescinded. The administrator of the veterans' home shall collect monthly any ~~membership contribution fees~~ membership contribution fees levied.
2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:
  - a. ~~Moneys earned during authorized leaves or furloughs from the veterans' home.~~
  - b. ~~Moneys expended by the member for hospitalization due to illness or injury.~~
  - e. b. Moneys expended by the member for other medical care or treatment, or for required medicines.
  - d. c. Such other receipts or expenditures as the ~~administrative committee veterans' home governing board~~ veterans' home governing board may permit to be deducted in individual cases.
3. All moneys received as a result of charging the ~~membership contribution fees~~ membership contribution fees authorized by subsection 1 must be deposited in the veterans' home operating fund.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 304****HOUSE BILL NO. 1053**

(Legislative Council)  
(Public Safety Committee)

AN ACT to amend and reenact sections 37-17.1-06 and 37-17.1-07 of the North Dakota Century Code, relating to the department of emergency services division of homeland security and local and regional emergency management organizations.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-06. State division of homeland security.**

1. The division of homeland security must have professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor, or from other funds made available to the director for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.
2. The division of homeland security shall prepare and maintain a state disaster plan and keep it current, which plan may include provisions for:
  - a. Averting or minimizing the injury and damage caused by disasters or emergencies.
  - b. Prompt and effective response to a disaster or emergency.
  - c. Emergency relief.
  - d. Identification of areas particularly vulnerable to a disaster or emergency.
  - e. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.
  - f. Assistance to local officials in developing and maintaining local and regional emergency management systems.
  - g. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
  - h. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials.

- i. Organization of manpower and chains of command.
  - j. Coordination of federal, state, regional, and local emergency management activities.
  - k. Coordination of state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
  - l. Other necessary matters.
3. The division of homeland security shall provide technical assistance for the development and revision of local and regional disaster or emergency operations plans prepared under section 37-17.1-07.
4. In preparing and revising state disaster or emergency plans, the division of homeland security shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and regional emergency management organizations, the division shall encourage them also to seek advice from these sources.
5. State disaster or emergency plans or any parts thereof have the force of law upon implementation by the governor.
6. The division of homeland security, in coordination with lead and support agencies, shall:
  - a. Coordinate the procurement of supplies, materials, and equipment during disaster or emergency operations.
  - b. Provide guidance and standards for local and regional disaster or emergency operational plans.
  - c. Periodically review local and regional disaster or emergency operational plans.
  - d. Coordinate state or state and federal assistance to local and regional emergency management organizations.
  - e. Establish and operate or assist local and regional emergency management organizations to establish and operate training programs and programs for emergency public information.
  - f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.
  - g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.

- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate and may enter agreements with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization.
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

**SECTION 2. AMENDMENT.** Section 37-17.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-07. Local or regional emergency management organizations.**

1. All areas of the state are within the jurisdiction of and must be served by the division of homeland security and by a local or regional emergency management organization.
2. Each county shall maintain an emergency management organization ~~which that~~ serves the entire county or must be a member of a regional emergency management organization that serves more than one county.
3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.
4. The mayor of or the president of the board of city commissioners in a city with an emergency management organization and the chairman of the board of county commissioners shall notify the division of homeland security of the manner in which the city and the county are providing or securing emergency management activities, identify each individual who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.

5. Each local or regional emergency management organization shall prepare and keep current a local disaster or emergency operational plan for its area.
6. ~~The~~ Each local or regional emergency management organization shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the disaster or emergency responsibilities of their local agencies and officials.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 305****HOUSE BILL NO. 1484**

(Representatives Carlson, Boucher)

(Senators Stenehjem, O'Connell)

(At the request of the Governor)

AN ACT to amend and reenact subdivision c of subsection 2 of section 37-17.1-07.1 of the North Dakota Century Code, relating to hazardous chemical fees.

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

**SECTION 1. AMENDMENT.** Subdivision c of subsection 2 of section 37-17.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is ~~one hundred fifty~~ four hundred seventy-five dollars. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 306****HOUSE BILL NO. 1451**

(Representatives Hunskor, DeKrey, Froseth, Mueller)  
(Senators Andrist, Erbele)

AN ACT to create and enact a new section to chapter 37-17.1 of the North Dakota Century Code, relating to a ban on open burning; to amend and reenact section 37-17.1-10 of the North Dakota Century Code, relating to a ban on open burning; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-10. Local disasters or emergencies - Penalty.**

1. Unless so declared in accordance with the provisions of subsection 4 of section 37-17.1-05, a local disaster or emergency may be declared only by the principal executive officer of the county or city. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the county or city. Any order or proclamation declaring a local disaster or emergency must be given prompt and general publicity and must be filed promptly with the county or city auditor.
2. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder.
3. ~~An order or proclamation issued under this section which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of an infraction.~~

**SECTION 2.** A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

**Burn ban - Penalty.** An order or proclamation under section 37-17.1-10 which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of a class B misdemeanor.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 307****HOUSE BILL NO. 1128**  
(Political Subdivisions Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-16 of the North Dakota Century Code, relating to immunity and exemptions for actions in response to emergency management; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-16. Immunity and exemption.**

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the The state nor any, a county or city or its departments and agencies, or any disaster or emergency worker, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.
2. Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing ~~their~~ the worker's duties, practices ~~such~~ the professional, mechanical, or other skill during a disaster or emergency.
3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 308****HOUSE BILL NO. 1048**

(Legislative Council)  
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 37-17.1 of the North Dakota Century Code, relating to intrastate mutual aid; and to repeal sections 37-17.1-24 and 37-17.1-25 of the North Dakota Century Code, relating to mutual intrastate mutual aid agreements.

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

**SECTION 1.** A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

**Intrastate mutual aid agreements.** The department of emergency services shall prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency. To access state funds for disaster response and recovery during a nonfederally declared disaster, counties and cities shall participate in intrastate mutual aid and shall take all necessary steps to ensure eligibility for federal funds.

**SECTION 2. REPEAL.** Sections 37-17.1-24 and 37-17.1-25 of the North Dakota Century Code are repealed.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 309

### SENATE BILL NO. 2163

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

AN ACT to create and enact chapter 37-17.3 of the North Dakota Century Code, relating to the state radio broadcasting system; and to repeal chapter 54-23.2 of the North Dakota Century Code, relating to the state radio broadcasting system.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

**37-17.3-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the division of state radio.
2. "Division" means the division of state radio of the department of emergency services.
3. "Mobile radio" means a radio capable of transmitting eleven watts or greater.
4. "System" means the state radio broadcasting system consisting of the state radio network and North Dakota telecommunications system that may be employed to enhance interoperable communications that promotes officer and citizen safety.

**37-17.3-02. State radio broadcasting system.** The director may purchase the necessary apparatus and equipment to construct or establish a radio broadcasting system for this state that enables seamless interoperable communications from local, state, and federal levels. The director is charged with the operation and maintenance of the system.

**37-17.3-03. Political subdivisions may furnish receiving and transmitting sets for enforcement purposes.** Each county and organized city within the state may furnish to its law enforcement, firefighters, and emergency medical personnel the appropriate radio or radio systems that can access the state radio system. Each mobile radio that is programmed to access the state radio system must be registered with the division of state radio and assigned a unit number. A one-time fee of ten dollars for registering and assigning unit numbers must be paid to the director on all newly added radios by the appropriate governmental entity. Agencies with registered radios must validate assigned unit numbers annually.

**37-17.3-04. Broadcasting dispatches - Reports required.** The director shall broadcast all dispatches and reports submitted which have a reasonable relation to or connection with the apprehension of criminals, the prevention of crimes,

or the maintenance of peace and order in the state, including disaster emergency services.

**37-17.3-05. Emergency service for certain messages.** Every telephone company and company providing communications equipment operating within this state shall provide emergency service to all messages or calls directed to any station of the system.

**37-17.3-06. Official use of radio equipment on private automobiles prohibited without permit.** No person may equip or use in a privately-owned automobile or any other motor vehicle a mobile two-way radio equipped for transmitting and receiving on any frequency authorized for first responder use in the state of North Dakota without first applying for and securing a permit from the director. This section does not apply to the use of a two-way citizens' band radio, a two-way business radio, or a two-way amateur radio in an automobile or any other motor vehicle.

**37-17.3-07. Maintenance of radio system - Personnel, equipment, and expense.** The director may employ such radio operators and assistants and such radio equipment as the director may deem necessary to carry out the provisions of this chapter and shall fix the compensation of such personnel. The cost of maintenance and operation of the system and all shortwave length radio receiving and transmitting sets owned or operated by the state must be paid out of the appropriation for this purpose.

**37-17.3-08. State radio system and service fees.** The director shall establish the appropriate fees for access to the state radio system and the service provided to local government users of the mobile data terminal system and North Dakota law enforcement telecommunications systems and other such systems that may be employed that enhance public safety. Changes to fees charged by the division, including schedule of charges for counties and cities, will take effect on July first. The director shall announce any fee increases a minimum of one year prior to the effective date. When the director considers an adjustment, as a part of the process the director shall consult with representatives of state and local units of government prior to setting fees. The director may consider economic conditions and the general economy when setting fees. The director shall deposit all revenue obtained under this chapter with the state treasurer for deposit in the state radio broadcasting system operating account. The state radio broadcasting system operating account must be expended pursuant to legislative appropriation for the operation and maintenance of the system. Fee structures will include:

1. Mobile data terminal fees. The division shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by the division for providing the service and will be levied on a per system user basis. State general fund agencies that access the system will not incur any fees for the service.
2. Each county and city law enforcement department that accesses the North Dakota teletype system shall pay a fee based upon fifty percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. Other law enforcement affiliated organizations and federal agencies will pay one hundred percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. State general fund agencies that access the system will not incur any fees for the service. City and

county law enforcement fees will be based on the following schedule of charges per terminal:

- a. County population of less than five thousand shall pay thirty dollars per month.
- b. County population of five thousand or more but less than ten thousand shall pay sixty dollars per month.
- c. County population of ten thousand or more but less than fifteen thousand shall pay ninety dollars per month.
- d. County population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred twenty dollars per month.
- e. County population of twenty-five thousand or more shall pay one hundred sixty dollars per month.

**37-17.3-09. Public safety answering point service and fees.** The division may provide 911 services to a political subdivision with a population of fewer than twenty thousand and shall charge the apportioned amount consistent with the actual costs of providing the service per telephone access line and wireless access line for 911 services provided to political subdivisions. The fee for 911 wireless services must be charged to and paid by the political subdivision receiving services from the division under this section from and after the date of the agreement entered into by the political subdivision or its designee under section 57-40.6-05, whether the date of that agreement is before or after April 4, 2003. Each county currently receiving 911 services from the division shall abide by the standards established by law.

**37-17.3-10. Lost or missing individuals.** The division shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or missing individuals.
2. Implement a data exchange system to compile, maintain, and make available for dissemination to North Dakota and to out-of-state law enforcement agencies descriptive information to assist appropriate agencies in recovering lost or missing individuals.
3. Establish contacts and exchange information regarding lost or missing individuals with the national crime information center.
4. Notify each enforcement agency that a report of lost or missing individuals must be entered as soon as the minimum level of data specified by the division is available to the reporting agency and that no waiting period for entry of that data exists. If the enforcement agency is unable to enter the data, the division shall enter the information into the national crime information center file immediately upon notification.
5. Compile and retain information regarding lost or missing individuals in a separate file, in a manner that allows the information to be used by law enforcement and other agencies considered appropriate for investigative purposes by the division. The enforcement agency is responsible for maintaining the disposition of the case and periodically

shall review the case with the reporting party and the division to ensure all available information is included and to determine the current status of the case. As used in this subsection, "individual" means an individual who is eighteen years of age or older.

6. Provide prompt confirmation of the receipt and entry of the lost or missing individuals report into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 7.
7. If any parent, guardian, or identified family member is unable to receive services from the local law enforcement agency, allow the parent, guardian, or identified family member to submit a lost or missing individuals report to the division which must be included in the division file system and transmitted to the national crime information center.
8. Compile and maintain a historical data repository relating to lost or missing individuals for the following purposes:
  - a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of lost or missing individuals; and
  - b. To provide a factual and statistical base for research that addresses the problem of lost or missing individuals.

**SECTION 2. REPEAL.** Chapter 54-23.2 of the North Dakota Century Code is repealed.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 310****HOUSE BILL NO. 1073**

(Human Services Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 37-17.3 and a new section to chapter 65-06 of the North Dakota Century Code, relating to adoption of the Uniform Emergency Volunteer Health Practitioners Act and workers' compensation coverage of volunteers; and to amend and reenact section 65-06-05 of the North Dakota Century Code, relating to workers' compensation coverage of volunteers.

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

**SECTION 1.** Chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

**37-17.3-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and which:
  - a. Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government, the state department of health, or the state board of animal health; or
  - b. Regularly plans and conducts its activities in coordination with an agency of the federal government, the state department of health, or the state board of animal health.
2. "Emergency" means an event or condition that is a disaster or an emergency as defined under chapter 37-17.1 and any event, condition, or incident for which the deployment of volunteer health practitioners is determined to be necessary by the state health officer, a local board of health, or the state veterinarian.
3. "Emergency declaration" means a declaration or proclamation of disaster or emergency issued by the governor.
4. "Emergency management assistance compact" means the interstate compact approved by Congress by Public Law No. 104-321 [110 Stat. 3877].
5. "Entity" means a person other than an individual.
6. "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

7. "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services and any other individual performing nonmedical support disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state department of health or a local public health unit and deployed through the emergency system for advance registration of volunteer health professionals.
8. "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:
  - a. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:
    - (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and
    - (2) Counseling, assessment, procedures, or other services;
  - b. Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and
  - c. Funeral, cremation, cemetery, or other mortuary services.
9. "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.
10. "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.
11. "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.
12. "Veterinary services" means the provision of treatment, care, advice or guidance, or other services, or supplies related to the health or death of an animal or animal populations, to the extent necessary to respond to an emergency, including:
  - a. Diagnosing, treating, or preventing an animal disease, injury, or other physical or mental condition by prescribing, administering, or dispensing vaccine, medicine, surgery, or therapy;
  - b. Using a procedure for reproductive management; and
  - c. Monitoring and treating animal populations for diseases that have spread or demonstrate the potential to spread to humans.

13. "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state during an emergency.

**37-17.3-02. Applicability to volunteer health practitioners.** This chapter applies to volunteer health practitioners registered with a registration system that complies with section 37-17.3-04 and who provide health or veterinary services in this state for a host entity during an emergency.

**37-17.3-03. Regulation of services during emergencies.**

1. During an emergency, the state department of health or the state board of animal health may limit, restrict, or otherwise regulate:
  - a. The duration of practice by volunteer health practitioners;
  - b. The geographical areas in which volunteer health practitioners may practice;
  - c. The types of volunteer health practitioners who may practice; and
  - d. Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.
2. An order issued under subsection 1 may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.
3. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:
  - a. Consult and coordinate its activities with the state department of health or the state board of animal health to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and
  - b. Comply with any laws other than this chapter relating to the management of emergency health or veterinary services, including chapters 23-27 and 43-29.

**37-17.3-04. Volunteer health practitioner registration systems.**

1. In the case of a volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency, the volunteer health practitioner registration system is the emergency system for advance registration of volunteer health professionals and is maintained by the state department of health and is known as the public health emergency volunteer medical reserve corps.
2. In the case of a volunteer health practitioner who is not covered under subsection 1, the volunteer health practitioner registration system is the

system established under subsection 1 or a system that qualifies under this subsection. To qualify as a volunteer health practitioner registration system under this subsection, a system must:

- a. Accept applications for the registration of volunteer health practitioners before or during an emergency;
  - b. Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;
  - c. Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and
  - d. Meet one of the following conditions:
    - (1) Be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the United States department of health and human services under section 3191 of the Public Health Services Act [42 U.S.C. 247d-7b];
    - (2) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to section 2801 of the Public Health Services Act [42 U.S.C. 300hh]; or
    - (3) Be operated by a:
      - (a) Disaster relief organization;
      - (b) Licensing board;
      - (c) National or regional association of licensing boards or health practitioners;
      - (d) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or
      - (e) Governmental entity.
3. During an emergency, the state department of health, a person authorized to act on behalf of the state department of health, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection 1 or 2. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.
  4. Upon request of a person in this state authorized under subsection 3, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

5. A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

**37-17.3-05. Recognition of volunteer health practitioners licensed in other states.**

1. During an emergency, a volunteer health practitioner, registered with a registration system that complies with section 37-17.3-04 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.
2. A volunteer health practitioner qualified under subsection 1 is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

**37-17.3-06. No effect on credentialing and privileging.**

1. In this section:
  - a. "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.
  - b. "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.
2. This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards during an emergency.

**37-17.3-07. Provision of volunteer health or veterinary services - Administrative sanctions.**

1. Subject to subsections 2 and 3, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.
2. Except as otherwise provided in subsection 3, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.
3. The state department of health or the state board of animal health may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.

4. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.
5. A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:
  - a. The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or
  - b. From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.
6. In addition to the authority granted by law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:
  - a. May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;
  - b. May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and
  - c. Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.
7. In determining whether to impose administrative sanctions under subsection 6, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

**37-17.3-08. Relation to other laws.**

1. This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection 2, this chapter does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact.
2. The department of emergency services, pursuant to the emergency management assistance compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or

employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

**37-17.3-09. Regulatory authority.** The health council may adopt rules to implement this chapter. In doing so, the health council shall consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible.

**37-17.3-10. Limitations on civil liability for volunteer health practitioners.**

1. Subject to subsection 3, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is not liable for damages for an act or omission of the practitioner in providing those services.
2. A person is not vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection 1.
3. This section does not limit the liability of a volunteer health practitioner for:
  - a. Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
  - b. An intentional tort;
  - c. Breach of contract;
  - d. A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or
  - e. An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.
4. A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.
5. In addition to the immunity provided in subsection 1, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is entitled to all the rights, privileges, or immunities provided by state laws limiting liability of volunteers.

**37-17.3-11. Workers' compensation coverage.**

1. Except as provided in subsection 2, a volunteer health practitioner who dies or is injured as the result of providing health or veterinary services as provided under this chapter is not considered to be an employee of this state for the purpose of receiving benefits under title 65 and must be

treated for the purposes of North Dakota law as an individual eligible for workers' compensation or similar benefits under the law of the state in which the volunteer is qualified for service under an emergency system for advance registration of volunteer health practitioners authorized under subsection 2 of section 37-17.3-04.

2. A volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency who dies or is injured as a result of providing health or veterinary services as provided under this chapter is eligible for benefits as provided under title 65 if the volunteer is qualified and serving under the emergency system for advance registration of volunteer health practitioners of this state under subsection 1 of section 37-17.3-04.

**SECTION 2. AMENDMENT.** Section 65-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**65-06-05. Reimbursement by state for liability in excess of premiums collected.** Whenever liability on claims against the fund credited to the classification of ~~volunteer emergency or disaster emergency volunteers and trainees or volunteer health practitioners as defined under chapter 37-17.3~~ exceeds the amount of premiums paid into ~~such~~ the fund, such excess liabilities ~~shall be~~ are a general obligation of the state of North Dakota and must be reimbursed to the organization for credit to the workforce safety and insurance fund by legislative appropriation.

**SECTION 3.** A new section to chapter 65-06 of the North Dakota Century Code is created and enacted as follows:

**Uniform Emergency Volunteer Health Practitioners Act - Health practitioners.** A volunteer health practitioner under subsection 2 of section 37-17.3-11 is eligible for benefits as provided under this chapter.

Approved April 28, 2009

Filed May 1, 2009

**CHAPTER 311****HOUSE BILL NO. 1510**

(Representatives Dosch, L. Meier)

AN ACT to amend and reenact subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans' preference.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

Approved April 28, 2009

Filed May 1, 2009

## CHAPTER 312

### HOUSE BILL NO. 1482

(Representatives Carlson, Boucher)  
(Senators Stenehjem, O'Connell)  
(At the request of the Governor)

AN ACT to amend and reenact sections 37-28-02 and 37-28-03 of the North Dakota Century Code, relating to the definition of foreign service and period of service and payment of adjusted compensation for domestic and foreign service; to amend and reenact section 6 of chapter 17 of the 2005 Session Laws, as amended by section 10 of chapter 42 of the 2007 Session Laws, relating to payment of adjusted compensation for veterans; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-02. Definitions.** As used in this chapter:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
  - a. The surviving unremarried husband or wife as of the date of signing the application;
  - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
  - c. The surviving person standing in loco parentis; or
  - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran after December 5, 1992, for which the veteran received an armed forces expeditionary medal or campaign badge or performed service overseas in direct support to the global war on terror.
5. "Honorable and faithful" means service evidenced by:
  - a. An honorable discharge, or its equivalent;
  - b. In the case of an officer, a certificate of service; and

- c. In the case of a veteran who has not been discharged, a certificate from the appropriate service authority that the veteran's service was honorable and faithful.
6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2009~~ 2011.
7. a. "Resident" means a veteran who was a bona fide resident of the state of North Dakota at the time of mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.
- b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12302 and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 2. AMENDMENT.** Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-03. Payment of adjusted compensation for domestic and foreign service.** Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service; ~~not to exceed nine hundred dollars~~. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof; ~~not to exceed one thousand eight hundred dollars~~. ~~Combined totals for stateside and foreign service may not exceed one thousand eight hundred dollars~~. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation related to the mobilization during which the purple heart was earned. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2009~~ 2011, or in the case of a soldier mobilized on June 30, ~~2009~~ 2011, not later than six months after the end of the mobilization period of service.

**SECTION 3. AMENDMENT.** Section 6 of chapter 17 of the 2005 Session Laws, as amended by section 10 of chapter 42 of the 2007 Session Laws, is amended and reenacted as follows:

**SECTION 6. EXEMPTION - TRANSFER.** Any unexpended general fund appropriation authority relating to the \$5,000,000 appropriated in section 3 of this Act for the payment of adjusted compensation to veterans is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, ~~2009~~ 2011, and ending June 30, ~~2014~~ 2013.

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

Approved March 19, 2009

Filed March 24, 2009

## CHAPTER 313

### HOUSE BILL NO. 1181

(Representatives DeKrey, Belter, Martinson, Metcalf)  
(Senators Dotzenrod, Hogue)

AN ACT to create and enact chapter 37-29 of the North Dakota Century Code, relating to job protections for volunteer emergency responders of the adjutant general's office; to amend and reenact section 54-06-27 of the North Dakota Century Code, relating to public service job protections for volunteer emergency responders; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>126</sup> **SECTION 1.** Chapter 37-29 of the North Dakota Century Code is created and enacted as follows:

##### **37-29-01. Definitions.**

1. As used in this chapter, unless the context otherwise requires:
  - a. "Disaster or emergency" means circumstances resulting in a volunteer emergency responder acting in the capacity as a volunteer emergency responder.
  - b. "Volunteer emergency responder" means an individual in good standing as:
    - (1) A volunteer member of the North Dakota army national guard or North Dakota air national guard; or
    - (2) A volunteer civilian member of the civil air patrol.

##### **37-29-02. Discrimination prohibited in hiring practices - Civil actions.**

An employer may not discriminate from hiring or otherwise deny employment to an individual who is a volunteer emergency responder, based on the fact the individual is a volunteer emergency responder. A volunteer emergency responder who is discriminated against or denied employment under this section may bring a civil action against the employer that violated this section, seeking reasonable reparations for damages caused due to the discrimination or denial of employment. A civil action under this section must be commenced within one year of the date of the violation.

##### **37-29-03. Discrimination prohibited in employment practices - Limitations - Verification - Civil actions.**

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<sup>126</sup> Section 37-29-03 was also amended by section 14 of House Bill No. 1016, chapter 16.

1. An employer may not terminate or demote an employee who is a volunteer emergency responder or in any other manner discriminate against that employee in the terms and conditions of employment based upon the employee being absent or tardy from employment due to serving as a volunteer emergency responder in responding to a disaster or emergency.
2. An employee who is terminated, demoted, or otherwise discriminated against in violation of this section may bring a civil action against the employer that violated this subsection. In the civil action, the employee may seek reinstatement to the employee's former position; payment of back wages; reinstatement of fringe benefits; and if seniority rights are granted, the employee may seek reinstatement of seniority rights. A civil action under this section must be commenced within one year of the date of the violation.
3. Subsection 1 does not apply if due to serving as a volunteer emergency responder, the employee is absent or tardy from the employee's place of employment for a period that exceeds ten regular business days in a calendar year.
4. In order to receive the protections of subsection 1, an employee who will be absent or tardy from the employee's place of employment while serving as a volunteer emergency responder in the case of a disaster or emergency shall make reasonable efforts to notify the employer of that service and shall continue to make those reasonable notification efforts over the course of the absence.
5. An employer may request that an employee provide the employer with written verification of times and dates of instances during which the employee was absent or tardy from employment due to serving as a volunteer emergency responder in the case of a disaster or emergency. Verification under this subsection may include a statement from the department of emergency services, the adjutant general's office, the North Dakota wing of the civil air patrol, or other appropriate entity.
6. This section does not limit an employer from charging against an employee's regular pay the time the employee is absent or tardy from employment while serving as a volunteer emergency responder to a disaster or emergency.

#### **37-29-04. Exceptions.**

1. Subsection 1 of section 37-29-03 is not applicable if the employer is a state agency, an agency of a political subdivision, or a private entity that performs critical emergency services during a disaster or emergency, and the employer's executive officer determines the absence of an employee who is also a volunteer emergency responder will cause undue hardship or the inability of the employer to provide critical emergency services during a disaster or emergency. Under this subsection the executive officer shall:
  - a. Make all reasonable efforts to inform an employee who is a volunteer emergency responder that the employment services that employee performs are essential and therefore that employee's



may not exceed ~~five~~ ten working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 24, 2009

Filed March 24, 2009

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 314

### HOUSE BILL NO. 1071

(Representatives Drovdal, S. Meyer, Froseth)  
(Senator Lyson)

AN ACT to amend and reenact subsection 1 of section 38-08-08 and section 47-16-39.1 of the North Dakota Century Code, relating to the provisions of pooling orders and the failure to pay royalties to unleased mineral interest owners.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, that owner's just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section before August 1, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. An unleased mineral interest pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit or, at the operator's election, a cost-free royalty interest of sixteen percent. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest. ~~Any unleased mineral interest pooled prior to July 4, 1983, is entitled to the cost-free royalty~~

interest and working interest as provided in this section from and after July 1, 1983.

**SECTION 2. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-39.1. Obligation to pay royalties - Breach.** The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days from initial oil or gas production from the unleased mineral interest owner's mineral interest, the operator shall pay interest on the unpaid royalties at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind ~~or~~, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 315

### SENATE BILL NO. 2141

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact chapter 38-11.2 of the North Dakota Century Code, relating to damages to land surface caused by subsurface mineral extraction and related exploration.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 38-11.2 of the North Dakota Century Code is created and enacted as follows:

**38-11.2-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of a subsurface mineral extraction well and the injection, production, and completion operations ensuing from the drilling which require entry upon the surface estate, and includes subsurface mineral exploration activities.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the subsurface minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the subsurface minerals underlying a specified tract of land.
5. "Subsurface mineral" means any naturally occurring element or compound recovered under the provisions of chapter 38-12, but for the purpose of this chapter excludes coal, oil and gas, sand and gravel, and rocks crushed for sand and gravel.
6. "Subsurface mineral exploration activities" means any method of obtaining information relative to locating and defining subsurface minerals that results in surface disturbance.
7. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
8. "Surface owner" means any person who holds record title to the surface of the land as an owner.

**38-11.2-02. Inspection of well site.** Upon request of another state agency, the surface owner, or an adjacent landowner, the state department of health shall conduct a site visit and evaluate site-specific environmental data as necessary to

ensure compliance with applicable environmental protection laws and regulations relating to air, water, and land management under the jurisdiction of the department.

**38-11.2-03. Notice of drilling operations.**

1. The mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by agreement of both parties.
2. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given.
3. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a copy of this chapter.
4. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

**38-11.2-04. Damage and disruption payments - Statute of limitations.**

1. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula agreeable between the surface owner and the mineral developer. When determining damages, consideration must be given to the period of time during which the loss occurs.
2. The surface owner may elect to be paid damages in annual installments over a period of time.
3. The surface owner must be compensated for harm caused by subsurface mineral exploration only by a single sum payment.
4. The payments contemplated by this section only cover land directly affected by drilling operations.
5. Payments under this section are intended to compensate the surface owner for damage and disruption. Any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.
6. To receive compensation under this section, any person shall notify the mineral developer of the damages sustained by the person within two

years after the injury occurs or would become apparent to a reasonable person.

**38-11.2-05. Agreement - Offer of settlement.** Unless both parties provide otherwise by written agreement, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by section 38-11.2-03 is presented. The person seeking compensation may accept or reject any offer so made.

**38-11.2-06. Rejection - Legal action - Fees and costs.** If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. The court, in its discretion, may award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling operations are commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

**38-11.2-07. Protection of surface and ground water - Other responsibilities of mineral developer.**

1. The mineral developer shall conduct or have conducted an inventory of water wells located within one-half mile [804.67 meters] of where subsurface mineral exploration activities are conducted, if such exploration activities appear reasonably likely to encounter ground water, or within one mile [1.61 kilometers] of a subsurface mineral production site.
2. The mineral developer shall conduct or have conducted a certified water quality and quantity test within one year preceding the commencement of subsurface mineral production operations on each water well or water supply located on the involved real property and as identified by the surface owner of that real property.
3. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where subsurface mineral exploration activities are or have been conducted or within one mile [1.61 kilometers] of a subsurface mineral production site has been disrupted, or diminished in quality or quantity by the drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations.
4. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer.
5. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section.

6. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.
7. A tract of land is not bound to receive water contaminated by drilling operations on another tract of land and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
8. The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations.
9. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

**38-11.2-08. Application of chapter.** The remedies provided by this chapter do not preclude any person from seeking other remedies allowed by law. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 316****SENATE BILL NO. 2140**

(Natural Resources Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 18 of section 38-14.1-24 and subsection 2 of section 38-14.2-14 of the North Dakota Century Code, relating to the time period for successful revegetation on lands permitted for surface coal mining and reclamation operations and limitations for filing liens on abandoned mine lands that are reclaimed.

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

**SECTION 1. AMENDMENT.** Subsection 18 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation commences at the date of initial planting. However, for previously mined areas that are affected by remining, the operator's responsibility for successful revegetation will extend for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, and other work in order to assure compliance with the applicable standards. For the purposes of this subsection, "previously mined areas" are lands that were affected by coal mining activities prior to January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

**SECTION 2. AMENDMENT.** Subsection 2 of section 38-14.2-14 of the North Dakota Century Code is amended and reenacted as follows:

2. No lien may be filed against the property of any person, in accordance with this section, ~~who owned the surface prior to May 2, 1977, and who~~ neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 317****HOUSE BILL NO. 1370**

(Representatives S. Meyer, Drovdal, Kempenich, Onstad)  
(Senators Bowman, Wardner)

AN ACT to create and enact a new section to chapter 38-18.1 of the North Dakota Century Code, relating to perfecting title to dormant minerals; and to amend and reenact sections 38-18.1-03, 38-18.1-04, 38-18.1-05, and 38-18.1-06 of the North Dakota Century Code, relating to termination of mineral interests.

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

**SECTION 1. AMENDMENT.** Section 38-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**38-18.1-03. When mineral interest deemed to be used.**

1. A mineral interest is deemed to be used when:
  - a. There are any minerals produced under that interest.
  - b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.
  - c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
  - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
  - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
  - f. Taxes are paid on the mineral interest by the owner or the owner's agent.
  - g. A proper statement of claim is recorded as provided by section 38-18.1-04.
  - ~~h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.~~
2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and

may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.

**SECTION 2. AMENDMENT.** Section 38-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**38-18.1-04. Statement of claim - Recording - Time.** The statement of claim provided for in section 38-18.1-02 must:

1. Be recorded by the owner of the mineral interest or the owner's representative prior to the end of the twenty-year period set forth in section 38-18.1-02; ~~or within two years after July 1, 1983, whichever is later.~~ A joint tenant, but not a tenant in common, may record a claim on behalf of oneself and other joint tenants.
2. Contain the name and address of the owner of the mineral interest, and a legal description of the land on, or under which, the mineral interest is located as well as the type of mineral interest involved.
3. Be recorded in the office of the recorder in the county in which the mineral interest is located.

The mineral interest is deemed to be in use at the date of recording, if the recording is made within the time provided by this section. A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims.

**SECTION 3. AMENDMENT.** Section 38-18.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**38-18.1-05. Failure to record the statement of claim.** Failure to record the statement of claim within the time period provided in section 38-18.1-04 will not cause a mineral interest to be extinguished if ~~the owner of the mineral interest meets all of the following requirements:~~

1. ~~Owns one or more mineral interests in the county in which the mineral interest in question is located at the time of the expiration of the time period provided in section 38-18.1-04.~~
  2. ~~Has failed to preserve the mineral interest in question.~~
  3. ~~Within sixty days after first publication of the notice provided for in section 38-18.1-06, recorded a statement of claim.~~
1. The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in section 38-18.1-06:
    - a. Files with the county recorder a statement of claim as required in section 38-18.1-04; or

- b. Files with the county recorder documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
2. A person other than the owner of record of the mineral interest files with the county recorder within sixty days after first publication of the notice provided for in section 38-18.1-06 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.

**SECTION 4. AMENDMENT.** Section 38-18.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**38-18.1-06. Notice of lapse of mineral interest - Method.**

1. ~~Any person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication.
2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry as defined in subsection 6, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.
3. The notice must state:
  - a. The name of the record owner of the mineral ~~interests~~ interest;
  - b. A description of the land on which the mineral interest involved is located; and
  - c. The name of the ~~person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located giving the notice.
4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given.
5. ~~A person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a statement of succession in interest indicating that ~~that person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located has succeeded to the ownership of the mineral interest.

6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:
  - a. The county recorder's records for the existence of any uses as defined in section 38-18.1-03 by the owner of the mineral interest;
  - b. The clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest;
  - c. The social security death index for the last-known residence of the owner of the mineral interest, if deceased; and
  - d. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

**SECTION 5.** A new section to chapter 38-18.1 of the North Dakota Century Code is created and enacted as follows:

**Perfecting title in surface owner.**

1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.
2. In an action brought under this section, the owner or owners of the surface estate shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
4. A mineral lessee that obtains a lease from the owner of the surface estate, which owner has obtained a judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.

5. Absent fraud or misrepresentation, the owner or owners of the surface estate which obtain a judgment under this section and lease minerals to a lessee are entitled to retain all lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.

Approved April 24, 2009

Filed April 29, 2009

## CHAPTER 318

### SENATE BILL NO. 2095

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact chapter 38-22 of the North Dakota Century Code, relating to the geologic storage of carbon dioxide; to repeal section 38-08-24 of the North Dakota Century Code, relating to priorities in permitting carbon dioxide geologic storage projects; to provide a penalty; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 38-22 of the North Dakota Century Code is created and enacted as follows:

**38-22-01. Policy.** It is in the public interest to promote the geologic storage of carbon dioxide. Doing so will benefit the state and the global environment by reducing greenhouse gas emissions. Doing so will help ensure the viability of the state's coal and power industries, to the economic benefit of North Dakota and its citizens. Further, geologic storage of carbon dioxide, a potentially valuable commodity, may allow for its ready availability if needed for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals. Geologic storage, however, to be practical and effective requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources.

**38-22-02. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas.
2. "Commission" means the industrial commission.
3. "Geologic storage" means the permanent or short-term underground storage of carbon dioxide in a storage reservoir.
4. "Permit" means a permit issued by the commission allowing a person to operate a storage facility.
5. "Pore space" means a cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.
6. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including

oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

7. "Storage facility" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. It does not include pipelines used to transport carbon dioxide to the storage facility.
8. "Storage operator" means a person holding or applying for a permit.
9. "Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide.

**38-22-03. Commission authority.** The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter and its objectives.
2. To regulate activities relating to a storage facility, including construction, operation, and closure.
3. To enter, at a reasonable time and manner, a storage facility to inspect equipment and facilities; to observe, monitor, and investigate operations; and to inspect records required to be maintained at the facility.
4. To require that storage operators provide assurance, including bonds, that money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority, after notice and hearing, to amend provisions in a permit and to revoke a permit.
6. To dissolve or change the boundaries of any commission-established oil or gas field or unit that is within or near a storage reservoir's boundaries.
7. To grant, for good cause, exceptions to this chapter's requirements and implementing rules.

**38-22-04. Permit required - Permit transfer.** Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

**38-22-05. Permit applications, fees, costs, and priorities - Carbon dioxide storage administrative fund.**

1. A person applying for a permit shall:
  - a. Comply with application requirements set by the commission.
  - b. Pay a fee in an amount set by the commission. The amount of the fee must be set by rule and must be based on the commission's anticipated cost of processing the application. The fee must be deposited in the carbon dioxide storage administrative fund.

- c. Pay to the commission the costs the commission incurs in publishing notices for hearings and holding hearings on permit applications.
2. In processing permit applications the commission shall give priority to storage operators who intend to store carbon dioxide produced in North Dakota.

**38-22-06. Permit hearing - Hearing notice.**

1. The commission shall hold a public hearing before issuing a permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of the hearing must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile of the storage reservoir's boundaries.
4. Notice of the hearing must be given to each surface owner of land overlying the storage reservoir and within one-half mile of the reservoir's boundaries.
5. Notice of the hearing must be given to any additional persons that the commission requires.
6. Service of hearing notices required by this section must conform to personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure.
7. Hearing notices required by this section must comply with deadlines set by the commission.
8. Hearing notices required by this section must contain the information the commission requires.

**38-22-07. Permit consultation.** Before issuing a permit, the commission shall consult the state department of health.

**38-22-08. Permit requirements.** Before issuing a permit, the commission shall find:

1. That the storage operator has complied with all requirements set by the commission.
2. That the storage facility is suitable and feasible for carbon dioxide injection and storage.
3. That the carbon dioxide to be stored is of a quality that allows it to be safely and efficiently stored in the storage reservoir.
4. That the storage operator has made a good-faith effort to get the consent of all persons who own the storage reservoir's pore space.

5. That the storage operator has obtained the consent of persons who own at least sixty percent of the storage reservoir's pore space.
6. Whether the storage facility contains commercially valuable minerals and, if it does, a permit may be issued only if the commission is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an arrangement entered into by the mineral owners or mineral lessees and the storage operator.
7. That the proposed storage facility will not adversely affect surface waters or formations containing fresh water.
8. That carbon dioxide will not escape from the storage reservoir.
9. That substances that compromise the objectives of this chapter or the integrity of a storage reservoir will not enter a storage reservoir.
10. That the storage facility will not endanger human health nor unduly endanger the environment.
11. That the storage facility is in the public interest.
12. That the horizontal and vertical boundaries of the storage reservoir are defined. These boundaries must include buffer areas to ensure that the storage facility is operated safely and as contemplated.
13. That the storage operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting pore space owners are or will be equitably compensated.

**38-22-09. Permit provisions.** The commission may include in a permit or order all things necessary to carry out this chapter's objectives and to protect and adjust the respective rights and obligations of persons affected by geologic storage.

**38-22-10. Amalgamating property interests.** If a storage operator does not obtain the consent of all persons who own the storage reservoir's pore space, the commission may require that the pore space owned by nonconsenting owners be included in a storage facility and subject to geologic storage.

**38-22-11. Certificate.** When the commission issues a permit it shall also issue a certificate stating that the permit has been issued, describing the area covered, and containing other information the commission deems appropriate. The commission shall file a copy of the certificate with the county recorder in the county or counties where the storage facility is located.

**38-22-12. Environmental protection - Reservoir integrity.**

1. The commission shall take action to ensure that a storage facility does not cause pollution or create a nuisance. For the purposes of this provision and in applying other laws, carbon dioxide stored, and which remains in storage under a commission permit, is not a pollutant nor does it constitute a nuisance.

2. The commission's authority in subsection 1 does not limit the jurisdiction held by the state department of health. Nothing else in this chapter limits the jurisdiction held by the state department of health.
3. The commission shall take action to ensure that substances that compromise the objectives of this chapter or the integrity of a storage reservoir do not enter a storage reservoir.
4. The commission shall take action to ensure that carbon dioxide does not escape from a storage facility.

**38-22-13. Preservation of rights.** Nothing in this chapter nor the issuing of a permit:

1. Prejudices the rights of property owners within a storage facility to exercise rights that have not been committed to a storage facility.
2. Prevents a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided the drilling, production, and related activities comply with commission requirements that preserve the storage facility's integrity and protect this chapter's objectives.

**38-22-14. Fees - Carbon dioxide storage facility administrative fund - Continuing appropriation.**

1. Storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee must be in the amount set by commission rule. The amount must be based on the commission's anticipated expenses that it will incur in regulating storage facilities during their construction, operational, and preclosure phases.
2. The fee must be deposited in the carbon dioxide storage facility administrative fund. The fund must be maintained as a special fund and all money in the fund is appropriated and may be used only for defraying the commission's expenses in processing permit applications; regulating storage facilities during their construction, operational, and preclosure phases; and making storage amount determinations under section 38-22-23. The commission, however, through a cooperative agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility. Interest earned by the fund must be deposited the fund.

**38-22-15. Fees - Carbon dioxide trust fund - Continuing appropriation.**

1. Storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee must be in the amount set by commission rule. The amount must be based on the commission's anticipated expenses associated with the long-term monitoring and management of a closed storage facility.
2. The fee must be deposited in the carbon dioxide storage facility trust fund. The fund must be maintained as a special fund and all money in the fund is appropriated and may be used only for defraying expenses the commission incurs in long-term monitoring and management of a

closed storage facility. The commission, however, through a cooperative agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility. Interest earned by the fund must be deposited in the fund.

3. The industrial commission shall file with the director of the legislative council a report discussing whether the amount in the carbon dioxide storage facility trust fund and fees being paid into it are sufficient to satisfy the fund's objectives. The first report is due in December of 2014 and subsequent reports are due every four years thereafter.

**38-22-16. Title to carbon dioxide.** The storage operator has title to the carbon dioxide injected into and stored in a storage reservoir and holds title until the commission issues a certificate of project completion. While the storage operator holds title, the operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the storage facility.

**38-22-17. Certificate of project completion - Release - Transfer of title and custody.**

1. After carbon dioxide injections into a reservoir end and upon application by the storage operator, the commission shall consider issuing a certificate of project completion.
2. The certificate may only be issued after public notice and hearing. The commission shall establish notice requirements for this hearing.
3. The certificate may only be issued after the commission has consulted with the state department of health.
4. The certificate may not be issued until at least ten years after carbon dioxide injections end.
5. The certificate may only be issued if the storage operator:
  - a. Is in full compliance with all laws governing the storage facility.
  - b. Shows that it has addressed all pending claims regarding the storage facility's operation.
  - c. Shows that the storage reservoir is reasonably expected to retain the carbon dioxide stored in it.
  - d. Shows that the carbon dioxide in the storage reservoir has become stable. Stored carbon dioxide is stable if it is essentially stationary or, if it is migrating or may migrate, that any migration will be unlikely to cross the storage reservoir boundary.
  - e. Shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity.
  - f. Shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the commission.

6. Once a certificate is issued:
  - a. Title to the storage facility and to the stored carbon dioxide transfers, without payment of any compensation, to the state.
  - b. Title acquired by the state includes all rights and interests in, and all responsibilities associated with, the stored carbon dioxide.
  - c. The storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements associated with the storage facility.
  - d. Any bonds posted by the storage operator must be released.
  - e. Monitoring and managing the storage facility is the state's responsibility to be overseen by the commission until such time as the federal government assumes responsibility for the long-term monitoring and management of storage facilities.

### **38-22-18. Penalties.**

1. A person who violates a provision of this chapter or a commission rule or order under this chapter, is subject to a civil penalty imposed by the commission or a court not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense. Paying the penalty does not make legal an illegal act nor relieve a person on whom the penalty is imposed from correcting the violation or from liability for damages caused by the violation.
2. In determining the amount of the penalty, the commission shall consider:
  - a. The nature of the violation, including its circumstances and gravity, and the hazard or potential hazard to the public's or a private person's health, safety, and economic welfare.
  - b. The economic or environmental harm caused by the violation.
  - c. The economic value or other advantage gained by the person committing the violation.
  - d. The history of previous violations.
  - e. The amount necessary to deter future violations.
  - f. Efforts to correct the violation.
  - g. Other matters justice requires.

### **38-22-19. Enhanced recovery projects.**

1. This chapter does not apply to applications filed with the commission proposing to use carbon dioxide for an enhanced oil or gas recovery project, rather such applications will be processed under chapter 38-08.

2. The commission may allow an enhanced oil or gas recovery project to be converted to a storage facility. In considering whether to approve a conversion, and upon conversion, the provisions of this chapter and its implementing rules apply, but if during the conversion process unique circumstances arise, the commission, to better ensure that the chapter's objectives are fulfilled, may waive such provisions and may impose additional ones.

**38-22-20. Cooperative agreements and contracts.**

1. The commission may enter into agreements with other governments, government entities, and state agencies for the purpose of carrying out this chapter's objectives.
2. The commission may enter into contracts with private persons to assist it in carrying out this chapter's objectives. Unless the circumstances require otherwise, the commission shall, in entering such contracts, follow the process set out in section 38-08-04.4. If an emergency exists the commission may enter contracts without public notice and without competitive bidding.

**38-22-21. Trusts, monopolies, restraint of trade.** Cooperative operation of a storage facility permitted by the commission does not violate North Dakota statutes relating to trusts, monopolies, or restraint of trade.

**38-22-22. Participation of public interests.** The entity or official controlling state interests or the interests of political subdivisions is authorized to consent to and participate in a geologic storage project.

**38-22-23. Determining storage amounts - Carbon credits - Fee.**

1. The commission, under procedures and criteria it may adopt, shall determine the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project. The commission may also make such a determination for carbon dioxide stored under this chapter.
2. The purpose for determining storage amounts is to facilitate using the stored carbon dioxide for such matters as carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes.
3. The commission may charge a reasonable fee to the person requesting a storage determination. The fee must be set by rule.
4. Fees the commission receives for storage determinations must be deposited into the carbon dioxide storage facility administrative fund.

**SECTION 2. REPEAL.** Section 38-08-24 of the North Dakota Century Code is repealed.

# MOTOR VEHICLES

## CHAPTER 319

### HOUSE BILL NO. 1233

(Representatives Berg, Dahl, DeKrey)  
(Senators Lyson, Nelson)

AN ACT to amend and reenact section 39-03-18 of the North Dakota Century Code, relating to the highway patrol asset forfeiture fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-03-18 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-18. Highway patrol - Assets forfeiture fund - Purpose - Continuing appropriation.** There is created a fund to be known as the highway patrol assets forfeiture fund. The fund consists of funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law; ~~and funds received from federal shared forfeiture proceedings.~~ The total amount of deposits into the fund may not exceed three hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated as a continuing appropriation to the highway patrol for the following purposes:

1. For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of the property.
2. For paying overtime compensation incurred as a result of investigations or violations of any state criminal law or law relating to the control of drug abuse.
3. For purchasing equipment related to criminal interdiction.
4. For paying matching funds required as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation or apprehension of persons violating the provisions of chapter 19-03.1.

The superintendent of the highway patrol, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for the use of the fund and shall personally approve, in writing, all requests for the use of the fund.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 320****SENATE BILL NO. 2150**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-04-02 and subdivision f of subsection 1 of section 39-05-05 of the North Dakota Century Code, relating to use of the owner's legal name for motor vehicle registration.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-04-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Application must be made by the owner thereof using the legal name as evidenced by a valid state-issued driver's license, identity card, or any other documentary evidence that confirms to the satisfaction of the director the true identity of the owner, upon appropriate forms approved or furnished by the department, and every application must be signed by the owner and must contain the owner's county of residence, address, and a brief description of the vehicle to be registered, including the name of the maker, either the engine, serial, or identification number, if any, whether new or used, and the last license number known, and the state in which issued, and, upon the registration of a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle. When two or more owners are designated, at least one of the owners must comply with the identification requirement in this subsection and all names used must be legal names. The application must contain other information as may be required by the department.

**SECTION 2. AMENDMENT.** Subdivision f of subsection 1 of section 39-05-05 of the North Dakota Century Code is amended and reenacted as follows:

- f. The owner's legal name, as evidenced by a valid state-issued driver's license, identity card, or any other documentary evidence that confirms to the satisfaction of the director the true identity of the owner, street address, city, and county, or township and county, of residence. When two or more owners are designated, at least one of the owners must comply with the identification requirement of this subdivision and all names used must be legal names. A dealer shall make specific inquiry as to this information before filling in the information on the application.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 321****SENATE BILL NO. 2313**

(Senators Robinson, Krebsbach, Lindaas)  
(Representatives J. Kelsh, Kerzman, Metcalf)

AN ACT to amend and reenact section 39-04-10.4 of the North Dakota Century Code, relating to military identification numbers on antique military vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.4 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.4. Antique motor vehicles - License and fee - Use.**

1. Any motor vehicle which is at least forty years old may be permanently licensed by the department upon the payment of a registration fee of ten dollars. The department shall design and issue a distinctive number plate for this purpose. In lieu of the distinctive number plate, the owner of the motor vehicle may, at the discretion of the director, display on the motor vehicle a number plate from the year in which the motor vehicle was manufactured or in the case of military vehicles, military identification numbers. The number plate from the year of manufacture or military identification numbers may not be used in lieu of a distinctive number plate when it would create a duplication of a number in the recordkeeping system of the department. A number plate from the year of manufacture or military identification numbers must be legible and must be restored to the satisfaction of the department. Notwithstanding section 39-04-11, only one number plate needs to be displayed on a motor vehicle licensed under this subsection. Motor vehicles registered under the provisions of this section may not be used in the routine functions of a business or farming operation.
2. Any motor vehicle which is at least forty years old may, if not licensed under subsection 1, be permanently licensed using a personalized plate issued under section 39-04-10.3, in which case a one-time fee of one hundred dollars is due.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 322****SENATE BILL NO. 2149**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 39-04-10.8, 39-04-10.11, and 39-04-10.12, subsection 3 of section 39-04-10.13, sections 39-04-14 and 39-04-14.1, subdivision j of subsection 2 of section 39-04-18, subsection 3 of section 39-04-19, and sections 39-04-22, 39-04-23, and 39-04-26 of the North Dakota Century Code, relating to motor vehicle registered gross weight.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.8 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.8. National guard number plates.** The director, in cooperation with the adjutant general, shall issue distinctive number plates to members of the national guard. A plate issued under this section must bear the national guard insignia designated by the adjutant general and the letters "NG" before the number. The director may issue the plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which does not exceed ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms]. On request of the director, the adjutant general shall certify those members of the national guard eligible to receive the plates. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional fee of not more than five dollars to cover the cost of issuing the distinctive number plates, the applicant is entitled to issuance of the distinctive number plates. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the national guard or if the registrant has retired from the national guard after twenty years or more of military service. On termination of the registrant's eligibility, the registrant shall return the distinctive number plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and adjutant general shall cooperate in establishing procedures to implement this section.

**SECTION 2. AMENDMENT.** Section 39-04-10.11 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.11. Firefighter's association plates.** The director, in cooperation with the North Dakota firefighter's association, shall design a decorative decal that contains an insignia representing service in the pursuit of firefighting and which is to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional annual fee of fifteen dollars for deposit in the highway fund, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decal and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which equals or exceeds ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms]. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the North Dakota firefighter's association. On request of the director, the North Dakota firefighter's association shall certify those members of the North Dakota firefighter's association eligible to receive the decals and plates.

On termination of the registrant's eligibility, the registrant shall return the decals and plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and the North Dakota firefighter's association shall cooperate in establishing procedures to implement this section.

**SECTION 3. AMENDMENT.** Section 39-04-10.12 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.12. North Dakota future farmers of America foundation number plates.** The director shall design a decorative decal that contains the insignia of the North Dakota FFA foundation to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional fee of ten dollars, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decals and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which equals or exceeds ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms].

**SECTION 4. AMENDMENT.** Subsection 3 of section 39-04-10.13 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which equals or exceeds ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms].

**SECTION 5. AMENDMENT.** Section 39-04-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-14. Renewal of registration.** Every vehicle registration, except those described in section 39-04-14.1, under this chapter expires on December thirty-first each year and must be renewed annually upon application by the owner and by payment of the fees required by law, such renewal to take effect on the first day of January each year. An owner who has made proper application for renewal of registration of a vehicle previous to January first but who has not received the number plates, plate, or registration card for the ensuing year is entitled to operate or permit the operation of such vehicle upon the highways upon displaying thereon the number plates or plate issued for the preceding year for such time, to be prescribed by the department, as may be required for the issuance of the new plates. If a previously registered motor vehicle whose registered gross weight exceeds ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms] is purchased during the period the vehicle's registration in this state is expired, the registration fee must be prorated on a monthly basis from the date of purchase to January first.

**SECTION 6. AMENDMENT.** Section 39-04-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-14.1. Renewal of registration of motor vehicles under certain weight.** Except as otherwise provided in this section, the registration of a motor vehicle whose registered gross weight does not exceed ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms] expires on the last day of the month which is the

anniversary of the month it was originally registered. The registration may be renewed annually on application by the owner and payment of fees required by law. The renewal takes effect on the first day of the first month of the registration period. An owner of more than one vehicle qualifying for staggered registration under this section may renew all of the owner's vehicles in the same month. The director shall prorate the registration fees accordingly. If a previously registered motor vehicle whose registered gross weight does not exceed ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms] is purchased during the period the vehicle's registration in this state is expired, the department shall collect the annual registration fee under section 39-04-19 and shall issue registration that expires on the last day of the month that is the anniversary of the month the vehicle was purchased.

**SECTION 7. AMENDMENT.** Subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- j. Motor vehicles not exceeding twenty-six thousand pounds [11793.40 kilograms] registered gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 3901] or who has a one hundred percent service-connected disability as determined by the department of veterans' affairs who is entitled to display a distinctive license plate issued by the department upon the payment of a fee of five dollars. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.

<sup>128</sup> **SECTION 8. AMENDMENT.** Subsection 3 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ~~ten~~ twenty thousand pounds [~~4535.92~~ 9071.84 kilograms] registered gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

**SECTION 9. AMENDMENT.** Section 39-04-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-22. Motor vehicle exceeding registered gross weight for which licensed not to be operated on highway - Exception.** Except as otherwise provided by law, a motor vehicle, or a combination of motor vehicles, may not be operated upon the highways of this state when the gross weight exceeds the registered gross weight for which the vehicle or combination of vehicles was licensed. Any person violating the provisions of this section will be required to license such motor vehicle at the higher legal rate in accordance with the weight carried by the motor vehicle at the time of the violation for the entire license period. However, such registration may not be construed to authorize the movement of loads in violation of chapter 39-12.

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<sup>128</sup> Section 39-04-19 was also amended by section 1 of House Bill No. 1153, chapter 326, and section 17 of Senate Bill No. 2012, chapter 40.

**SECTION 10. AMENDMENT.** Section 39-04-23 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-23. Registered motor vehicle transporting property may change registration to higher or lower registered gross weight.** Any owner of a motor vehicle transporting property who has licensed the vehicle for any gross weight limitations may change the registration to a higher registered gross weight limitation by the payment of the difference between the fee required for the new registration and the fee paid for the registration under which the vehicle is being operated. The fee must equal one-twelfth of the annual higher registration fee less one-twelfth of the registration fee already paid, the difference multiplied by the number of whole and partial calendar months remaining in the registration period. In no event may the fee be less than five dollars.

**SECTION 11. AMENDMENT.** Section 39-04-26 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-26. Registration of vehicles transporting property - Based on registered gross weight - Minimum gross weight - Exemption.** The registration and license fee for a motor vehicle or for any lawful combination of motor vehicles used for the transportation of property must be based upon the registered gross weight of the motor vehicle or combination of vehicles. The minimum gross weight for which the motor vehicle or combination of motor vehicles can be licensed is double the unloaded weight of the motor vehicle or combination of vehicles and, subject to the minimum, the owner of any motor vehicle or combination of vehicles in the application for license shall set out the gross weight for which the owner desires a license. The gross weight of any trailer, semitrailer, or farm trailer may not be included in the minimum gross weight for which a vehicle must be licensed when the vehicle or combination of vehicles is not for hire and when the gross weight of the trailer, semitrailer, or farm trailer being towed does not exceed twenty-four thousand pounds [10886.22 kilograms].

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 323

### HOUSE BILL NO. 1414

(Representatives L. Meier, Dosch, Grande, Nathe)  
(Senators Dever, Lyson)

AN ACT to create and enact section 39-04-10.14 of the North Dakota Century Code, relating to the issuance of special plates for surviving family members of fallen members of the United States military.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 39-04-10.14 of the North Dakota Century Code is created and enacted as follows:

#### 39-04-10.14. North Dakota Gold Star number plates - Definition - Description - Fee.

1. The director may issue distinctive number plates to a surviving spouse, parent, including stepmother, stepfather, parent through adoption, and foster parent who stands or stood in loco parentis, grandparents, child, including stepchild and child through adoption, and sibling, including half-brother and half-sister, of a member of the armed forces of the United States who died while serving on active duty during a time of military conflict. The director shall issue a number plate under this section upon receiving:
  - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
  - b. Payment of an initial fee of fifteen dollars, of which ten dollars is to be deposited in the highway tax distribution fund and five dollars is to be deposited in the veterans' cemetery maintenance fund; and
  - c. Verification of subsequent payments of an annual surcharge of ten dollars paid to the adjutant general.
2. The department shall collect the fees and the ten dollar surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected for the veterans' cemetery and adjutant general to the adjutant general monthly. Within ten days of receipt of the funds, the adjutant general shall deposit five dollars of each initial fee in the veterans' cemetery maintenance fund and shall apportion the ten dollar surcharge and deposit five dollars in the veterans' cemetery trust fund and five dollars in the veterans' cemetery maintenance fund in the state treasury. The state treasurer may invest the fund in the same manner as the state investment board is authorized to make investments. At the request of the adjutant general, the interest in the veterans' cemetery trust fund must be deposited in the veterans' cemetery maintenance fund for the purpose of funding salaries and maintenance of the veterans' cemetery.

3. Plates issued under this section must bear a gold star emblem logo on the left side of the plate and the letters "GS" before the number. The director shall cooperate with the director of the department of veterans' affairs to design the gold star emblem logo. The director may issue one set of plates per eligible owner of a passenger motor vehicle or a truck the registered gross weight of which does not exceed twenty thousand pounds [4535.92 kilograms].
4. On request of the director, the department of veterans' affairs shall certify those surviving family members of deceased members of the United States armed forces listed above as eligible to receive the plates.
5. Once declared eligible for a Gold Star plate, the department may not remove the eligibility of a surviving family member.
6. Once a plate number is issued to an eligible family member, the department may not assign the plate to another eligible person.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 324****SENATE BILL NO. 2148**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact section 39-04-14.3 of the North Dakota Century Code, relating to online renewal receipts.

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

**SECTION 1.** Section 39-04-14.3 of the North Dakota Century Code is created and enacted as follows:

**39-04-14.3. Online registration renewal receipt showing compliance with registration is prima facie evidence.** The possession of a receipt, via the department's online registration renewal service, is prima facie evidence of compliance with motor vehicle registration laws, with reference to the vehicle therein described, for a period of fifteen days from the date of the printed receipt.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 325****HOUSE BILL NO. 1133**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 39-04-17 and 39-05-17 of the North Dakota Century Code, relating to certificates of notary showing registration requirements and transfer of title of a vehicle.

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

**SECTION 1. AMENDMENT.** Section 39-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-17. Certificate of notary showing compliance with registration is prima facie evidence - Penalty.** The possession of a certificate made out by a notary public or an authorized agent of a licensed vehicle dealer who took the acknowledgment of the application when the vehicle was first registered or required to be registered under the laws of this state, if such certificate shows the date of application, the make, registered weight, and year model of the motor vehicle, the manufacturer's number of the motor vehicle which such application describes, and further shows that such notary public, or authorized agent of a vehicle dealer, personally mailed the application with the remittance fee, is prima facie evidence of compliance with motor vehicle law with reference to the vehicle therein described, for a period of ~~thirty~~ forty-five days from the date of such application. Any violation of this section is an infraction punishable by a fine of not less than fifty dollars.

**SECTION 2. AMENDMENT.** Section 39-05-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-17. Transfer of title of vehicle - Endorsement required - Certificate of title delivered - New certificate obtained - Penalty.**

1. The owner or transferor of a motor vehicle who transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle. The owner or transferor shall include on the assignment and warranty of title the name of the transferee and the selling price of the vehicle if applicable.
2. If legal title passes to the transferee, the owner shall deliver the endorsed certificate of title to the transferee within fifteen days.
3. If legal title passes to a lienholder rather than the transferee, the transferee shall endorse a statement that the lienholder holds the lien and shall send the certificate of title to the department with an application for a new certificate of title showing the names of the new owner and lienholder. The certificate of title when issued must be sent by the department to the lienholder or the department may use an electronic lien notification procedure in lieu of sending a certificate of title to a lienholder.

4. Within thirty days ~~after receipt~~, the transferee shall deliver the endorsed certificate of title to the department with a transfer fee of five dollars, and shall make an application for a new certificate of title. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked if the transferee fails to present the endorsed certificate of title to the department for transfer and make application for a new certificate of title within thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery must be made to the owner.
5. A violation of this section by an owner, lienholder, or transferee is a class B misdemeanor.

Approved April 16, 2009  
Filed April 17, 2009

## CHAPTER 326

### HOUSE BILL NO. 1153

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-04-19, sections 39-04-39.3 and 39-05-30, and subsection 3 of section 39-16-10 of the North Dakota Century Code, relating to deposit of mile tax fees, motor vehicle registration fee collection agreements with home rule cities, payment of salary and expenses, and payments and refunds from funds on deposit with the Bank of North Dakota.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>129</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the state highway construction fund.

**SECTION 2. AMENDMENT.** Section 39-04-39.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-39.3. Motor vehicle registration fee collection agreements with home rule cities.** The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 and the department may enter into contractual agreements under which the department may collect any motor vehicle registration fees assessed by the city. Agreements entered into under this section must provide for an agreed-upon amount to be allowed the department for services rendered in connection with the collections. Any agreed-upon amount collected must be deposited in the motor vehicle registration fund. The department shall deposit with the state treasurer all money collected under this section and shall accompany each remittance with a certificate showing the city for which it was collected. The state treasurer, quarterly, shall pay to the city auditors of the several cities the money to which they are entitled under this section. ~~Agreements entered into under this section must provide for an agreed amount to be allowed the department for services rendered in connection with the collections. Any sums collected for services rendered must be paid to the state treasurer for deposit in the motor vehicle registration fund.~~

**SECTION 3. AMENDMENT.** Section 39-05-30 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>129</sup> Section 39-04-19 was also amended by section 17 of Senate Bill No. 2012, chapter 40, and section 8 of Senate Bill No. 2149, chapter 322.

**39-05-30. Fees and revenues collected placed in highway tax distribution fund - Payment of salaries and expenses.** All fees and revenues received by the director under the provisions of this chapter must be deposited by the director in the state treasury. Such moneys must be placed in the highway tax distribution fund. All salaries and other expenses incurred in connection with the provisions of this chapter must be paid out of the highway tax distribution motor vehicle registration fund in the manner provided by law for the disbursement of said fund.

**SECTION 4. AMENDMENT.** Subsection 3 of section 39-16-10 of the North Dakota Century Code is amended and reenacted as follows:

3. All payments and refunds made from cash deposits in the Bank of North Dakota under this chapter must be made upon a warrant-check issued by the office of management and budget department of transportation after submission of a duly authorized voucher signed by the director and approved by the office of the budget.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 327****HOUSE BILL NO. 1301**

(Representative Ruby)  
(Senator Nodland)

AN ACT to create and enact sections 39-05-35 and 47-10-26 of the North Dakota Century Code, relating to the conversion of manufactured homes to real property and the affixation of manufactured homes to real property and the conveyance and encumbrance of manufactured homes as real property; and to amend and reenact sections 11-18-02.2, 35-01-05.1, 39-05-01, 39-05-02.2, 39-05-09, 39-05-09.2, 39-05-19, 39-05-20, 39-05-22, 47-01-03, 57-02-04, and 57-55-01 and subsection 2 of section 57-55-10 of the North Dakota Century Code, relating to manufactured homes.

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

**SECTION 1. AMENDMENT.** Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**11-18-02.2. Statements of full consideration to be filed with state board of equalization or recorder - Procedure - Secrecy of information - Penalty.**

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed any one of the following:
  - a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.
  - b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.
  - c. A statement of the full consideration paid for the property conveyed.
  - d. A statement designating one of the exemptions in subsection 6 7 which the grantee believes applies to the transaction.
2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-26 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation any one of the following:
  - a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.

- b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.
- c. A statement of the full consideration paid by the party for the manufactured home before the affixation.
3. The recorder ~~shall~~ may not record any deed unless ~~it~~ the deed contains one of the statements required by subsection 1 or record any affidavit of affixation unless the affidavit contains or is accompanied by one of the statements required by subsection 2.
- 3- 4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.
- 4- 5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out ~~the purposes of~~ this section, and the forms ~~will~~ must contain a space for the explanation of special circumstances ~~which~~ that may have contributed to the amount of the consideration.
- 5- 6. For purposes of ~~this section~~ subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein ~~shall be~~ is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing ~~which~~ that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
- 6- 7. The ~~provisions of this~~ This section ~~do~~ does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
- a. Property owned or used by public utilities.
  - b. Property classified as personal property.
  - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
  - d. A sale ~~which~~ that resulted as a settlement of an estate.
  - e. All sales to or from a government or governmental agency.
  - f. All forced sales, mortgage foreclosures, and tax sales.
  - g. All sales to or from religious, charitable, or nonprofit organizations.
  - h. All sales when there is an indicated change of use by the new owners.
  - i. All transfer of ownership of property for which is given a quitclaim deed.

- j. Sales of property not assessable by law.
  - k. Agricultural lands of less than eighty acres [32.37 hectares].
  - l. A transfer that is pursuant to a judgment.
- 7- 8. The state board of equalization shall guard the secrecy of information contained on statements filed with the board ~~pursuant to under~~ subsection 1 or subsection 2, and any information contained on statements and any information provided by local officials ~~shall~~ must be limited to ~~such data as is~~ necessary to perform their official duties and shall may not include the names of any grantors or grantees to deeds or of any parties to affidavits of affixation. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors ~~or~~ grantees, or parties. The recorder shall guard the secrecy of information contained on reports filed in the recorder's office ~~pursuant to under~~ subdivision b of subsection 1 or subdivision b of subsection 2.
- 8- 9. Any person ~~who that~~ in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or who that falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor.

**SECTION 2. AMENDMENT.** Section 35-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**35-01-05.1. When security interest in vehicle valid.**

1. No security interest, including a security interest under chapter 41-09, in a vehicle, including a manufactured home, which is not inventory held for sale is valid as against subsequent purchasers and encumbrances of the property in good faith and for value unless the security interest is clearly indicated upon the certificate of title to the vehicle or unless such certificate of title is in the possession of the secured party, provided, however, that a purchase money security interest under chapter 41-09 in a manufactured home is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase money security interest attaches, and provided further the holder of a security interest in or a lien on a manufactured home may deliver lien release documents to a person to facilitate conveying or encumbering the manufactured home. A person receiving documents so delivered holds the documents in trust for the security interest holder or the lienholder.
2. Except as otherwise provided in section 47-10-26 and in subsections 1 and 2 of section 39-05-35, after a certificate of title has been issued for a manufactured home and as long as the manufactured home is subject to a security interest perfected under this section, the department may not file an affidavit of affixation, cancel the manufacturer's certificate of origin, or revoke the certificate of title, and the validity and priority of a security interest perfected under this section continues, notwithstanding any other provision of law.

3. The term "manufactured home" as used in subsections 1 and 2 is a manufactured home as defined in section 41-09-02, excluding a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.
4. The term "vehicle" as used in this section includes any vehicle for which a certificate of title is required under title 39 or other statutes of this state.
5. With respect to a manufactured home that is or will be permanently affixed to real property, upon recordation of an affidavit of affixation under section 47-10-26 and satisfaction of the requirements of subsections 1 through 3 of section 39-05-35, as applicable, a perfection or termination of a security interest with respect to the permanently affixed property is governed by chapter 47-10.

**SECTION 3. AMENDMENT.** Section 39-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-01. Definition Definitions.** In this chapter, unless the context or subject matter otherwise requires, "motor vehicle" includes a housetrailer or mobile home and ~~any~~ a semitrailer designed to be towed by a truck tractor and "manufactured home" means a manufactured home as defined in section 41-09-02.

**SECTION 4. AMENDMENT.** Section 39-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-02.2. Exclusions from the certificate of title requirement.** No certificate of title need be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.
2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing.
3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.
4. A vehicle regularly engaged in interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state.
5. A vehicle moved solely by human or animal power.
6. Implements of husbandry.
7. Special mobile equipment.
8. A self-propelled invalid wheelchair or invalid tricycle.
9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The

vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.

10. Other vehicles not required to be registered in this state or not required to display distinctive plates.
11. A manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

**SECTION 5. AMENDMENT.** Section 39-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-09. Issuance, contents, delivery, and term of certificate.**

1. After checking the application for a certificate as provided in section 39-05-08 and except as provided in subsection 4, the department, if it is satisfied that the applicant is the person entitled to the possession of the vehicle, shall issue a certificate of title which must contain:
  - a. The name of the owner.
  - b. The vehicle identification number.
  - c. The signature of the director.
  - d. The date issued.
  - e. A description of the vehicle as determined by the department.
  - f. A statement of the owner's title and of all liens or encumbrances upon the vehicle therein described and whether possession is held by the owner or lienholder.
2. Upon the reverse side of such certificate must be contained forms for the assignment of title or interest and warranty thereof by the owner with a space for the notation of liens and encumbrances upon such vehicle at the time of a transfer.
3. The amount of any lien or encumbrance upon the vehicle need not be shown anywhere on the certificate of title, only the fact of such lien or encumbrance, and the identity of the lienholder or encumbrancer. The department shall deliver the certificate of title to the owner or first lienholder. The certificate is good for the life of the vehicle as long as the vehicle is owned or held by the original holder of the certificate.
4. The department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26.
5. The holder of a manufacturer's certificate of origin to a manufactured home may deliver it to a person to facilitate conveying or encumbering the manufactured home. A person receiving a manufacturer's certificate of origin so delivered holds the certificate in trust for the person delivering the certificate.

6. Notwithstanding any other provision of law, a certificate of title issued by the department for a manufactured home is prima facie evidence of the facts appearing on the certificate, notwithstanding that the manufactured home, at any time, becomes affixed in any manner to real property.

**SECTION 6. AMENDMENT.** Section 39-05-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-09.2. Suspension or revocation of certificates of title.**

1. The department shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with chapter 28-32, when authorized by any other provision of law or if it finds:
  - a. The certificate of title was fraudulently procured or erroneously issued;
  - b. The vehicle has been scrapped, dismantled, or destroyed; or
  - c. A person has acquired a vehicle but has failed to transfer the ownership as required by this chapter.
2. For purposes of this section, the following apply:
  - a. Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
  - b. When the department suspends or revokes a certificate of title, the owner or person in possession of it shall immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.
  - c. The department may seize and impound any certificate of title which has been suspended or revoked.
3. Except as provided in subsection 2 of section 39-05-35, the department may not suspend or revoke a certificate of title to a manufactured home by reason of the fact that at any time the manufactured home becomes affixed in any manner to real property.

**SECTION 7. AMENDMENT.** Section 39-05-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-19. Obtaining certificate of title for vehicle when ownership obtained by other than voluntary means.** Whenever the ownership of any vehicle passes otherwise than by voluntary transfer, the transferee may obtain a certificate of title for the vehicle from the department upon application for the certificate and payment of a fee of five dollars. The application for the certificate must be accompanied by instruments or documents of authority, or copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26.

**SECTION 8. AMENDMENT.** Section 39-05-20 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-20. Transferee may obtain new certificate of title upon inability to obtain old certificate - Proof of ownership - Appeal.**

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26. Satisfactory proof of ownership must include compliance by the transferee with the procedures outlined in title 35. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases when the department is unable to determine the legal owner of record. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.
2. A person holding a certificate of title whose interests in the vehicle have been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate. The action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of the owner or lienholder listed in the old certificate.

**SECTION 9. AMENDMENT.** Section 39-05-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-22. Department to maintain file of surrendered certificates of title - Purpose - Records.** The department shall retain and appropriately file every surrendered certificate of title, such file to be maintained to permit the tracing of title of vehicles designated therein.

1. The department shall file, upon receipt, each affidavit of affixation relating to a manufactured home that is delivered in accordance with section 47-10-26 when satisfied of the affidavit's genuineness and regularity.
2. The department shall maintain a record of each affidavit of affixation filed in accordance with subsection 1. The record must state the name of each owner of the related manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.
3. The department shall file, upon receipt, each application for surrender of the manufacturer's certificate of origin relating to a manufactured home that is delivered in accordance with subsection 1 of section 39-05-35, when satisfied of the application's genuineness and regularity.

4. The department shall file, upon receipt, each application for surrender of the certificate of title relating to a manufactured home that is delivered in accordance with subsection 2 of section 39-05-35, when satisfied of the application's genuineness and regularity.
5. The department shall file, upon receipt, each application for confirmation of conversion relating to a manufactured home that is delivered in accordance with subsection 3 of section 39-05-35, when satisfied of the application's genuineness and regularity.
6. The department shall maintain a record of each manufacturer's certificate of origin accepted for surrender as provided in subsection 1 of section 39-05-35. The record must state the name of each owner of the manufactured home, the date the manufacturer's certificate of origin was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.
7. The department shall maintain a record of each manufactured home certificate of title accepted for surrender as provided in subsection 2 of section 39-05-35. The record must state the name of each owner of the manufactured home, the date the certificate of title was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.
8. The department shall maintain a record of each application for confirmation of conversion accepted as provided in subsection 3 of section 39-05-35. The record must state the name of each owner of the manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.
9. Such file of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be maintained for a period of five years or for such further time that the director may determine.

**SECTION 10.** Section 39-05-35 of the North Dakota Century Code is created and enacted as follows:

**39-05-35. Manufactured homes - Conversion to real property - Procedure - Rules.**

1. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is covered by a manufacturer's certificate of origin which the owner is able to produce and that is permanently affixed to real property as defined in subsection 1 of section 47-10-26, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-26, may surrender the manufacturer's certificate of origin to the manufactured home to the department by filing with the department an application for surrender of manufacturer's certificate of origin containing or accompanied by:

- (1) The name, residence, and mailing address of the owner;
  - (2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;
  - (3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;
  - (4) A statement, signed by the owner, stating either:
    - (a) Any facts or information known to the owner that may affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or
    - (b) That no such facts or information are known to the owner;
  - (5) A copy of the recorded affidavit of affixation as provided in accordance with subsection 5 of section 47-10-26;
  - (6) The original manufacturer's certificate of origin;
  - (7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;
  - (8) The applicable fee for filing the application for surrender; and
  - (9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-26 and is entitled to surrender the manufacturer's certificate of origin and the existence or nonexistence of security interests in or liens on the manufactured home.
- b. When satisfied of the genuineness and regularity of the surrender of a manufacturer's certificate of origin to a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:
- (1) Cancel the manufacturer's certificate of origin and update the department's records in accordance with the provisions of section 39-05-22; and
  - (2) Provide written acknowledgment of compliance with the provisions of this section to each person identified on the





application for confirmation of conversion containing or accompanied by:

- (1) The name, residence, and mailing address of the owner;
- (2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;
- (3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;
- (4) A statement, signed by the owner, stating either:
  - (a) Any facts or information known to the owner that could affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or
  - (b) That no such facts or information are known to the owner;
- (5) A recorded copy of the affidavit of affixation as provided in accordance with subsection 5 of section 47-10-26;
- (6) A sworn declaration by an attorney duly admitted to practice in this state or an agent of a title insurance company duly licensed to issue policies of title insurance in this state that the manufactured home is free and clear of, or has been released from, all recorded security interests, liens, and encumbrances; and
  - (a) Any facts or information known to that person that could affect the validity of the title of the manufactured home or the existence or nonexistence of any security interest in or lien on the manufactured home; or
  - (b) That no such facts or information are known to that person;
- (7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;
- (8) The applicable fee for filing the application for surrender; and
- (9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-26

and the existence or nonexistence of security interests in or liens on the manufactured home.

- b. When satisfied of the genuineness and regularity of the application for confirmation of conversion of a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:
    - (1) Update its records in accordance with the provisions of section 39-05-22; and
    - (2) Provide written acknowledgment of compliance with the provisions of this subsection to each person identified on the application for confirmation of conversion under paragraph 7 of subdivision a.
  - c. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application for confirmation of conversion of a manufactured home is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.
  - d. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.
4. The department may adopt rules to implement the provisions of this section.

**SECTION 11. AMENDMENT.** Section 47-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-01-03. Real property defined.** Real or immovable property shall consist of:

1. Land;
2. That which is affixed to land, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied;
3. That which is incidental or appurtenant to land; and
4. That which is immovable by law.

**SECTION 12.** Section 47-10-26 of the North Dakota Century Code is created and enacted as follows:

**47-10-26. Manufactured homes - Affixation to real property - Conveyance or encumbrance as real property.**

1. For purposes of this section, "manufactured home" means a manufactured home as defined in section 41-09-02. Notwithstanding this definition, for purposes of 11 U.S.C. 1322(b)(2), a manufactured home is deemed real property. For purposes of this section, a manufactured home is permanently affixed if the manufactured home is anchored to real property by attachment to a permanent foundation; constructed in accordance with applicable state and local building codes and manufacturer's specifications as provided in title 24, Code of Federal Regulations, part 3285; and connected to residential utilities, such as water, gas, electricity, or sewer or septic service.
2. To convey or voluntarily encumber a manufactured home as real property, the following conditions must be met:
  - a. The manufactured home must be permanently affixed to real property;
  - b. The ownership interests in the manufactured home and the real property to which the manufactured home is or will be permanently affixed must be identical, provided, however, that the owner of the manufactured home, if not the owner of the real property, is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution and the consent of the lessor of the real property;
  - c. The person having an ownership interest in the manufactured home shall execute and record with the recorder of the county in which the real property is located an affidavit of affixation as provided in subsection 3 and satisfies the other applicable requirements of this section; and
  - d. Upon receipt of a recorded copy of the affidavit of affixation under subsection 5, a person designated in the affidavit for filing with the department of transportation shall file the recorded copy of the affidavit of affixation with the department of transportation, except that:
    - (1) In a circumstance described in item 1 of subparagraph a of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation and the original manufacturer's certificate of origin, each as recorded in the county in which the real property is located, must be filed with the department of transportation under subsection 1 of section 39-05-35;
    - (2) In a circumstance described in item 1 of subparagraph b of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and the original certificate of title must be filed with the department of transportation under subsection 2 of section 39-05-35; and
    - (3) In a circumstance described in item 2 of subparagraph a of paragraph 4 of subdivision a of subsection 3, item 2 of subparagraph b of paragraph 4 of subdivision a of

subsection 3, or paragraph 6 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and an application for confirmation of conversion must be filed with the department of transportation under subsection 3 of section 39-05-35.

3. a. An affidavit of affixation must contain or be accompanied by:
- (1) The name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, and whether the manufactured home is new or used;
  - (2) (a) A statement that the party executing the affidavit is the owner of the real property described in the affidavit; or
    - (b) If not the owner of the real property:
      - [1] A statement that the party executing the affidavit is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution of the affidavit; and
      - [2] The consent of the lessor of the real property endorsed upon or attached to the affidavit and acknowledged or proved in the manner as to entitle a conveyance to be recorded;
  - (3) The street address and the legal description of the real property to which the manufactured home is or will be permanently affixed;
  - (4) (a) If the manufactured home is not covered by a certificate of title, a statement by the owner to that effect, and either:
    - [1] A statement by the owner of the manufactured home that the manufactured home is covered by a manufacturer's certificate of origin, the date the manufacturer's certificate of origin was issued, the manufacturer's serial number, and a statement that annexed to the affidavit of affixation is the original manufacturer's certificate of origin for the manufactured home, duly endorsed to the owner of the manufactured home, and that the owner of the manufactured home will surrender the manufacturer's certificate of origin to the department of transportation; or
    - [2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home

and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home; or

- (b) If the manufactured home is covered by a certificate of title, either:
  - [1] A statement by the owner of the manufactured home that the manufactured home is covered by a certificate of title, the date the title was issued, the title number, and that the owner of the manufactured home will surrender the title; or
  - [2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the certificate of title for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;
- (5) A statement whether the manufactured home is subject to one or more security interests or liens and:
  - (a) If the manufactured home is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home, including each holder shown on any certificate of title issued by the department of transportation, the original principal amount secured by each security interest or lien, and a statement that the security interest or lien will be released; or
  - (b) A statement that each security interest in or lien on the manufactured home, if any, has been released, together with due proof of each release;
- (6) If the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title, a statement by the owner of the manufactured home to that effect and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;
- (7) A statement that the manufactured home is or will be permanently affixed to the real property;
- (8) If the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete one of the statements required by subsection 2 of section 11-18-02.2; and
- (9) The name and address of a person designated for filing the recorded copy of the affidavit of affixation with the



from ordinary building materials onsite. Title to the manufactured home must be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which the structure has been affixed. The manufactured home is deemed to be real property and is governed by the laws applicable to real property.

8. Except as provided in subsections 3, 5, 6, and 7, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property. A conveyance of land upon which is located a manufactured home for which an affidavit of affixation has been recorded does not effect a conveyance or encumbrance of any interest in the manufactured home. A conveyance or encumbrance may only be made under the provisions of chapter 39-05. An agreement by a party to the transaction whereby the requirements of this subsection are waived is void as contrary to public policy.
9. Nothing in this section impairs any rights existing under law before the effective date of this Act of anyone claiming an interest in a manufactured home.

**SECTION 13. AMENDMENT.** Section 57-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-04. Real property defined.** Real property, for the purpose of taxation, includes:

1. The land itself, whether laid out in town lots or otherwise, and improvements to the land, such as ditching, surfacing, and leveling, except plowing and trees, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same and shall expressly include all such improvements made by persons to lands held by them under the laws of the United States, all such improvements to land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes, and improvements to land belonging to any other corporation or limited liability company whose property is not subject to the same mode and rule of taxation as other property.
2. All structures and buildings, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied, including systems for the heating, air-conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining, but shall not include items which pertain to the use of such structures and buildings, such as machinery or equipment used for trade or manufacture which are not constructed as an integral part of and are not essential for the support of such structures or buildings, and which are removable without materially limiting or restricting the use of such structures or buildings.
3. Machinery and equipment, but not including small tools and office equipment, used or intended for use in any process of refining products from oil or gas extracted from the earth, but not including such

equipment or appurtenances located on leased oil and gas production sites.

**SECTION 14. AMENDMENT.** Section 57-55-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-55-01. Definition.** For the purposes of this chapter, "mobile home" means a structure, either single or multisectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, owned or used as a residence or place of business of the owner or occupant, which is either attached to utility services or is twenty-seven feet [8.23 meters] or more in length, and includes a manufactured home as defined in section 41-09-02 other than a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied. For purposes of this chapter, "utility services" means services purchased by the occupant from a utility company under the jurisdiction of the public service commission, a rural electric cooperative, or a political subdivision of the state.

<sup>130</sup> **SECTION 15. AMENDMENT.** Subsection 2 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not apply to a mobile home that:
  - a. Is used only for the temporary living quarters of the owner or other occupant while the person is engaged in recreational or vacation activities, provided the unit:
    - (1) Displays a current travel trailer license; or
    - (2) Is a park model trailer that is used only for seasonal or recreational living quarters and not as a primary residence, and which is located in a trailer park or campground, and for which the owner has paid a park model trailer fee under section 39-18-03.2. For purposes of this paragraph, "park model" trailer means a recreational vehicle not exceeding forty feet [12.19 meters] in length which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use, is built on a single chassis, is mounted on wheels, has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode, and is certified by the manufacturer as complying with American national standards institute standard A119.5.
  - b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to the ground a foundation.
  - c. Is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the

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<sup>130</sup> Section 57-55-10 was also amended by section 3 of Senate Bill No. 2201, chapter 529.

land on which such mobile home is located or is in possession of the real property under the terms of a lease in recordable form which has a term that continues for at least twenty years after the date of execution with the consent of the lessor of the real property.

- d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 328****HOUSE BILL NO. 1132**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 2 of section 39-06-03, subsection 3 of section 39-06-19, subsection 1 of section 39-06.2-09, subsection 17 of section 39-06.2-10, section 39-20-03.1, subsection 2 of section 39-20-03.2, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to who may be licensed, distinguishing numbers on operator's licenses, content of commercial driver's licenses, disqualification and cancellation of commercial driver's licenses, action following test results of a resident operator, action following test result or refusal of a nonresident operator, and action following test results; and to repeal section 39-16-29 of the North Dakota Century Code, relating to seizure or return of an operator's license.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

2. To any person whose license has been suspended in this state or in any other state during such suspension, except as provided in section 39-06.1-03 or 39-06.1-11, nor to any person whose license has been revoked, except as provided in sections 39-06-35 ~~and~~, 39-06-36, and 39-06.1-11.

<sup>131</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

3. An applicant for renewal must present the application with fee for renewal of license to the director not before ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. After the initial application for a license in this state, the director may not require an applicant for renewal, replacement, or a substitute to provide a social security card ~~unless the applicant is changing the distinguishing number on the license to the applicant's social security number.~~ The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the

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<sup>131</sup> Section 39-06-19 was also amended by section 4 of House Bill No. 1161, chapter 329.

licensee is making a good-faith effort to comply with the child support order.

<sup>132</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Content of license. The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
  - a. The name and residential address of the person;
  - b. The person's color photograph;
  - c. A physical description of the person, including sex, height, ~~weight,~~ and eye ~~and hair~~ color;
  - d. Date of birth;
  - e. A distinguishing number assigned to the person ~~which upon request may be a number different from the person's social security number;~~
  - f. The person's signature;
  - g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
  - h. The name of this state; and
  - i. The dates between which the license is valid.

**SECTION 4. AMENDMENT.** Subsection 17 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

17. After suspending, revoking, ~~disqualifying,~~ or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

<sup>133</sup> **SECTION 5. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-03.1. Action following test result for a resident operator.** If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test

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<sup>132</sup> Section 39-06.2-09 was also amended by section 3 of House Bill No. 1438, chapter 334.

<sup>133</sup> Section 39-20-03.1 was also amended by section 1 of House Bill No. 1134, chapter 340.

shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately ~~take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.~~
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall ~~immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license,~~ issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. Alternatively, if the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the person who submitted to the blood, urine, or saliva test. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the person to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. If the person was

issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

**SECTION 6. AMENDMENT.** Subsection 2 of section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.

**SECTION 7. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a ~~person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and~~ the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's ~~operator's license~~ driving privileges as follows:
  - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person

has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.

- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
- c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
- d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

**SECTION 8. REPEAL.** Section 39-16-29 of the North Dakota Century Code is repealed.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 329****HOUSE BILL NO. 1161**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-06-03.1, subsection 2 of section 39-06-07, section 39-06-07.1, subsection 3 of section 39-06-19, and subsection 1 of section 39-06.2-08 of the North Dakota Century Code, relating to legal presence for obtaining an operator's license or nondriver identification card, license renewal fees, and commercial driver's license fees.

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

<sup>134</sup> **SECTION 1. 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 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. Within thirty days from receipt of a complete application that includes the applicant's social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.6. 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. Subject to the provisions of subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain such other information as the director may require to improve identity security. The director may require an applicant for an identification card to provide a social security card and proof of residence address.
2. To confirm the identity, date of birth, and legal presence of the applicant, the director or examining officer shall require satisfactory evidence be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth ~~and~~, identification, and legal presence of the applicant by the director or examining officer.

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<sup>134</sup> Section 39-06-03.1 was also amended by section 1 of Senate Bill No. 2067, chapter 330.

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 may advertise the availability and the use of the card.
7. Identification cards issued pursuant to this section are sufficient identification for all identification 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 the application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender the card to the director. When a cancellation is in effect, any law enforcement officer may take custody of 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.
10. The director may not withhold the issuance of a nondriver color photo identification card without reasonable cause.

**SECTION 2. AMENDMENT.** Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.6. The application must contain such other information as the director may require to improve identity security. The director may require an applicant for a license or instruction permit to provide a social security card and proof of residence address.

**SECTION 3. AMENDMENT.** Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-07.1. Proof of name and, date of birth, and legal presence for operator's license application.** The name and, date of birth, and legal presence on

all applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:

1. Certified birth certificate; or
2. Any other documentary evidence which confirms to the satisfaction of the director the true identity ~~and~~, date of birth, and legal presence of the applicant.

<sup>135</sup> **SECTION 4. AMENDMENT.** Subsection 3 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

3. An applicant for renewal must present the application with fee for renewal of license to the director not before ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. ~~After the initial application for a license in this state, the~~ The director may ~~not~~ require an applicant for renewal, replacement, or a substitute to provide a social security card ~~unless the applicant is changing the distinguishing number on the license to the applicant's social security number and proof of residence address.~~ The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.

<sup>136</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 39-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:
  - a. The full name and current mailing address of the person;
  - b. A physical description of the person, including sex, height, weight, and eye and hair color;
  - c. Date of birth;
  - d. The applicant's social security number;
  - e. The person's signature;
  - f. The certifications including those required by 49 CFR part 383.71(a);

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<sup>135</sup> Section 39-06-19 was also amended by section 2 of House Bill No. 1132, chapter 328.

<sup>136</sup> Section 39-06.2-08 was also amended by section 2 of House Bill No. 1438, chapter 334.

- g. Any other information required by the director; and
- h. A consent to release driving record information.

The application must be accompanied by an application fee of fifteen dollars. The application must contain any other information as the director may require to improve identity security. The director may require an applicant for a commercial license or commercial instruction permit to provide a social security card and proof of residence address.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 330****SENATE BILL NO. 2067**

(Senator J. Lee)

AN ACT to amend and reenact subsection 1 of section 39-06-03.1 and subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to the online registration of donors.

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

<sup>137</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue 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. Within thirty days from receipt of a complete application that includes the applicant's social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. The application must provide for the voluntary identification of the applicant as a donor under ~~the provisions of~~ chapter 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors. 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. Subject to ~~the provisions of~~ subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed.

<sup>138</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>137</sup> Section 39-06-03.1 was also amended by section 1 of House Bill No. 1161, chapter 329.

<sup>138</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1295, chapter 345.

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors. No license is valid until it has been signed by the licensee with the licensee's usual signature. ~~The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.6.~~ For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 331

### SENATE BILL NO. 2112

(Judiciary Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 10 of section 39-06.1-05, section 39-06.1-09, paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10, and section 39-10-26 of the North Dakota Century Code, relating to operation of a vehicle on approach of department of transportation vehicles; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 10 of section 39-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

10. Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 4 5 of section 39-10-26.

**SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-09. Moving violation defined.** For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22, subsection 1 of section 39-04-37, section 39-04-55, 39-06-01, 39-06-14, 39-06-16, 39-09-04.1, 39-09-09, subsection 1 of section 39-12-02, sections 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 4 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

<sup>139</sup> **SECTION 3. AMENDMENT.** Paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- |      |  |          |
|------|--|----------|
| (13) | Causing an accident with an authorized emergency vehicle <u>or a vehicle operated by or under the control of the director used for maintaining the state highway system</u> in violation of subsection 4 <u>5</u> of section 39-10-26, or equivalent ordinance | 2 points |
|------|--|----------|

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<sup>139</sup> Section 39-06.1-10 was also amended by section 1 of House Bill No. 1287, chapter 333.

**SECTION 4. AMENDMENT.** Section 39-10-26 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-26. Operation of vehicle on approach of Vehicle to stop or yield the right of way for authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.**

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on the interstate system or on a multilane highway outside the limits of a city unless the highway is part of the interstate system, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. If a vehicle operated by or under the control of the director used for maintaining the state highway system is parked or stopped on the interstate system or on a multilane highway outside the limits of a city, and the vehicle is displaying a flashing, revolving, or rotating amber or white light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
4. This section does not operate to relieve the driver of an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system from the duty to drive with due regard for the safety of all persons using the highway.
4. 5. a. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.

- b. An individual who violates subsection 3 and causes an accident with a vehicle operated by or under the control of the director used for maintaining the state highway system while the vehicle is displaying a visible flashing, revolving, or rotating amber or white light is guilty of an infraction.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 332****SENATE BILL NO. 2429**

(Senators O'Connell, Nodland, Olafson)  
(Representatives DeKrey, Gruchalla, Sukut)

AN ACT to amend and reenact subsection 10 of section 39-06.1-06 of the North Dakota Century Code, relating to a violation of hours of service provisions for commercial drivers.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

10. For a violation of subsection 3 of section 39-21-46, a fee established as follows:
  - a. Driving more than ~~ten~~ eleven hours since the last ~~eight~~ ten hours off duty, driving after ~~fifteen~~ fourteen hours on duty since the last ~~eight~~ ten hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one hundred dollars;
  - b. False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
  - c. Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and
  - d. All other violations of motor carrier safety rules adopted under subsection 3 of section 39-21-46, fifty dollars.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 333****HOUSE BILL NO. 1287**  
(Representative DeKrey)

AN ACT to amend and reenact subsection 7 of section 39-06.1-10 of the North Dakota Century Code, relating to the suspension of drivers' licenses.

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

<sup>140</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation ~~and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.~~
  - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation ~~and the violation is for an alcohol concentration of under eighteen one-hundredths of one percent by weight.~~
  - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight ~~or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.~~

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<sup>140</sup> Section 39-06.1-10 was also amended by section 3 of Senate Bill No. 2112, chapter 331.

- e. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.
- f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 334****HOUSE BILL NO. 1438**

(Representatives D. Johnson, Gruchalla, Hofstad)  
(Senators Fiebiger, G. Lee, Oehlke)

AN ACT to create and enact a new section to chapter 39-06.2 of the North Dakota Century Code, relating to a nonresident commercial driver's license; to amend and reenact sections 39-06.2-02, 39-06.2-08, and 39-06.2-09 of the North Dakota Century Code, relating to an application for a nonresident commercial driver's license; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
  - a. The number of grams of alcohol per one hundred milliliters of blood;
  - b. The number of grams of alcohol per two hundred ten liters of breath; or
  - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
  - a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];

- b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
  - c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
  - d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
  8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
  9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
  10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
  11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
  12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
  13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.
  14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
  15. "Fatality" means the death of a person as a result of a motor vehicle accident.
  16. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
  17. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
  18. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The gross vehicle weight rating of a

combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating or actual weight of the towed unit or units.

19. "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.
20. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
21. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.
22. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
23. "Nonresident commercial driver's license" means a commercial driver's license issued by a state to an individual domiciled in a foreign country meeting the requirements of 49 CFR 383.23(b)(1).
24. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
24. 25. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
  - a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
  - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely;
  - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
  - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
  - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such

violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or

- f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported.

~~25-~~ 26. "State" means a state of the United States or the District of Columbia.

~~26-~~ 27. "United States" means the fifty states and the District of Columbia.

<sup>141</sup> **SECTION 2. AMENDMENT.** Section 39-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-08. Application for commercial driver's license.**

1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:
  - a. The full name and current mailing address of the ~~person~~ applicant;
  - b. A physical description of the ~~person~~ applicant, including sex, height, weight, and eye and hair color;
  - c. Date of birth;
  - d. The applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;
  - e. The ~~person's~~ applicant's signature;
  - f. The certifications including those required by 49 CFR part 383.71(a);
  - g. Any other information required by the director; and
  - h. A consent to release driving record information.
2. The application must be accompanied by an application fee of fifteen dollars.
- ~~2-~~ 3. When the holder of a commercial driver's license changes the holder's name or mailing address, an application for a duplicate license must be made as provided in section 39-06-18.
- ~~3-~~ 4. ~~No person~~ An individual who has been a resident of this state for thirty days may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

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<sup>141</sup> Section 39-06.2-08 was also amended by section 5 of House Bill No. 1161, chapter 329.

- 4- 5. Any ~~person~~ individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, or cancellation of the ~~person's~~ individual's commercial driver's license for a period of at least sixty consecutive days.

<sup>142</sup> SECTION 3. AMENDMENT. Section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-09. Commercial driver's license.**

1. ~~Content of license~~: The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
  - a. The name and residential address of the person;
  - b. The person's color photograph;
  - c. A physical description of the person, including sex, height, weight, and eye and hair color;
  - d. Date of birth;
  - e. A distinguishing number assigned to the person which upon request may be a number different from the person's social security number;
  - f. The person's signature;
  - g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
  - h. The name of this state; and
  - i. The dates between which the license is valid.
2. The director may issue a nonresident commercial driver's license pursuant to the limitations of 49 CFR 383 including waiving the social security number requirement. The face of the license must be marked "nonresident" in accordance with 49 CFR 383.153(b).
3. ~~Classifications, endorsements, and restrictions~~: Commercial driver's licenses may be issued with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles. Vehicles for which an endorsement is required may not be driven unless the proper endorsement appears on the license. The requirements of placarding vehicles transporting hazardous materials under subparagraph b of

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<sup>142</sup> Section 39-06.2-09 was also amended by section 3 of House Bill No. 1132, chapter 328.

paragraph 3 of subdivision a and the endorsement required under paragraph 1 of subdivision b do not apply to a person who is the operator of a farm vehicle, provided such vehicle is controlled and operated by a farmer and used to transport hazardous materials in the form of farm supplies within one hundred fifty miles [241.40 kilometers] of the farm, and not used in the operations of a common or contract carrier.

a. Classifications:

- (1) Class A. Any combination of vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], provided the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds [4535.92 kilograms].
- (2) Class B. Any single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], and any such vehicle towing a vehicle not in excess of ten thousand pounds [4535.92 kilograms].
- (3) Class C. Any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms] comprising:
  - (a) Vehicles designed to transport sixteen or more passengers, including the driver; and
  - (b) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 CFR part 172, subpart F.

b. Endorsements and restrictions:

- (1) "H" - authorizes the driver to drive a vehicle transporting hazardous materials.
- (2) "T" - authorizes driving double and triple trailers.
- (3) "P" - authorizes driving vehicles carrying passengers.
- (4) "N" - authorizes driving tank vehicles.
- (5) "X" - combinations of tank vehicles and hazardous material vehicles.
- (6) "S" - authorizes driving a schoolbus.

Other restrictions may be placed upon a commercial driver's license, as provided in section 39-06-17. The applicant shall pay a fee of three dollars for each endorsement.

3. 4. ~~Applicant record check.~~ Before issuing a commercial driver's license, the director shall obtain driving record information through the

commercial driver's license information system, the national driver's register, and from each state in which the person has been licensed.

- 4- ~~5.~~ ~~Notification of license issuance.~~ Within ten days after issuing a commercial driver's license, the director shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.
- 5- ~~6.~~ ~~Expiration of license.~~ A commercial driver's license issued under this chapter expires in the manner provided for operator's licenses under section 39-06-19.
- 6- ~~7.~~ ~~License renewal procedures.~~ Every person applying for renewal of a commercial driver's license must complete the application form required by subsection 1 of section 39-06.2-08, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

**SECTION 4.** A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

**Nonresident license.**

1. The department may issue a nonresident commercial driver's license to an applicant who does not present a social security card as required by section 39-06.2-08 but who otherwise meets the requirements for a nonresident commercial driver's license. A license issued under this subsection is valid only during the period of time of the applicant's authorized stay in the United States. The license may be renewed only upon presentation of valid documentary evidence that the status has been extended. The department shall renew without a skills or knowledge test a nonresident commercial license that has been expired for a duration not longer than one year.
2. The fee for a nonresident commercial driver's license is twenty dollars.

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

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 335****HOUSE BILL NO. 1534**

(Representatives Griffin, Dahl)

AN ACT to amend and reenact subsection 2 of section 39-08-01 and section 39-08-01.2 of the North Dakota Century Code, relating to special punishment for causing injury or death while under the influence of alcohol.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. A person Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

**SECTION 2. AMENDMENT.** Section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol.**

1. The penalty provided in this section applies when:
  - a. A person If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the person's individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.
  - b. 2. A person If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the person's individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person; ~~or~~
    - e. A person is convicted of violating section 39-08-04 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.

- 2- 3. If the defendant was at least eighteen years of age at the time of the offense under chapter 12-1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12-1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon.
  
- 3- If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 336****SENATE BILL NO. 2279**

(Senators Nething, O'Connell, Klein)  
(Representatives Clark, Keiser, Wald)

AN ACT to amend and reenact subsection 5 of section 39-08-13 of the North Dakota Century Code, relating to the parties from whom a motor vehicle accident investigating officer's opinion may be obtained.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 39-08-13 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon affirmation by a party to the accident, a party's legal representative, or the insurer of any party to the accident that the investigating officer's opinion is material to a determination of liability and upon payment of a fee of five dollars, the director ~~may or~~ investigating agency shall release a completed copy of the investigating officer's opinion to the entity requesting the information. The request must be made on an appropriate form approved by the director.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 337****SENATE BILL NO. 2349**

(Senators G. Lee, Fiebiger, Miller)  
(Representatives R. Kelsch, Pietsch, Vig)

AN ACT to amend and reenact section 39-10.1-05 of the North Dakota Century Code, relating to the operation of bicycles.

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

**SECTION 1. AMENDMENT.** Section 39-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-10.1-05. Riding on roadway and bicycle path.**

1. ~~Every person~~ An individual operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
2. ~~Persons~~ A group of individuals riding bicycles upon a roadway may not ride more than two abreast, except on paths or parts of roadways set aside for the exclusive use of bicycles.
3. ~~Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and may not use the roadway.~~

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 338****SENATE BILL NO. 2241**

(Senators Olafson, Fiebiger, Nodland)  
(Representatives Delmore, Kempenich, Ruby)

AN ACT to amend and reenact subsection 3 of section 39-12-02 of the North Dakota Century Code, relating to the fee for an overwidth vehicle or load.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department of transportation. Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:
  - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
  - b. The fee for a non-self-issuing interstate permit is ten dollars per trip or three hundred dollars per calendar year for unlimited trips.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.
  - d. The fee for engineering is twenty-five dollars per trip.
  - e. The fee for faxing a permit is five dollars.
  - f. The fee for a single trip permit is twenty dollars per trip.
  - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
  - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.

- i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or ~~five~~ one hundred dollars per calendar year unless the vehicle is a noncommercial fish house trailer being moved by the owner, then the fee is twenty dollars per calendar year.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 339****HOUSE BILL NO. 1219**

(Representatives Gruchalla, Boucher, Schneider, Weisz)  
(Senators Freborg, Lyson, Olafson)

AN ACT to amend and reenact section 39-20-01.1 of the North Dakota Century Code, relating to the chemical test of a driver in an accident.

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

**SECTION 1. AMENDMENT.** Section 39-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.**

1. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is involved in an accident resulting in the death or ~~serious bodily injury, as defined in section 12.1-01-04,~~ of another person, and there is probable cause to believe that the driver is in violation of section 39-08-01 or has committed a moving violation as defined in section 39-06.1-09, the driver ~~may~~ must be compelled by a police officer to submit to a test or tests of the driver's blood, breath, ~~saliva,~~ or urine to determine the alcohol concentration or the presence of other drugs or substances.
  
2. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is involved in an accident resulting in the serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the driver is in violation of section 39-08-01, a law enforcement officer may compel the driver to submit to a test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances. The methods and techniques established by the director of the state crime laboratory must be followed in collecting and preserving a specimen or conducting a test.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 340****HOUSE BILL NO. 1134**

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-20-03.1 of the North Dakota Century Code, relating to mailing of report and notice forms for driving under the influence.

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

<sup>143</sup> **SECTION 1. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-03.1. Action following test result for a resident operator.** If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take

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<sup>143</sup> Section 39-20-03.1 was also amended by section 5 of House Bill No. 1132, chapter 328.

possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. Alternatively, if

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the person who submitted to the blood, urine, or saliva test, whether or not the person is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. ~~Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest.~~ Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the person to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
- ~~3.~~ 4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director ~~and the person's operator's license taken under subsection 4 or 2.~~ If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 341****SENATE BILL NO. 2092**  
(Senators G. Lee, Klein)  
(Representatives Belter, Weisz, Kaldor)

AN ACT to repeal section 39-21-55 of the North Dakota Century Code, relating to an exemption from rear-end protection requirements for certain vehicles; and to declare an emergency.

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

**SECTION 1. REPEAL.** Section 39-21-55 of the North Dakota Century Code is repealed.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved February 26, 2009  
Filed February 26, 2009

**CHAPTER 342****SENATE BILL NO. 2367**

(Senators Oehlke, Cook, Erbele)  
(Representative D. Johnson)

AN ACT to create and enact a new section to chapter 39-24 of the North Dakota Century Code, relating to safety fees for snowmobiles; and to amend and reenact sections 39-22.3-04 and 39-29-01.1 of the North Dakota Century Code, relating to motor-powered recreational vehicle dealer licenses and safety fees for off-highway vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-22.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.** The director may deny an application for a dealer's license or suspend, revoke, or cancel the license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
2. For any willful failure to comply with this chapter or with any rule adopted by the director.
3. For knowingly permitting any salesperson to sell or exchange, or offer or attempt to sell or exchange, any motor-powered recreational vehicle except for the licensed motor-powered recreational vehicle dealer by whom the salesperson is employed, or to offer, transfer, or assign any sale or exchange that they may have negotiated to any other dealer.
4. For having violated any law relating to the sale, distribution, or financing of motorcycles.
5. For having ceased to have an established place of business.
6. For failure to collect and timely transmit the snowmobile safety and off-highway safety fees.

**SECTION 2.** A new section to chapter 39-24 of the North Dakota Century Code is created and enacted as follows:

**Snowmobile safety fees.** Upon the sale of a new or used snowmobile and in addition to other fees and taxes imposed under section 39-24-03, a dealer shall collect a five dollar safety fee from the buyer. Within fifteen days after the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of snowmobiles sold during that calendar quarter and includes fees collected from the buyer. Fees imposed under this section must be deposited in the state snowmobile fund established under section 39-24-05. The parks and recreation department may use these funds solely for snowmobile

safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor-powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting snowmobile safety fees.

**SECTION 3. AMENDMENT.** Section 39-29-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee.** Upon the sale of a new or used off-highway vehicle, a dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of off-highway vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the off-highway vehicle fund established under section 39-29-05. The fees may be used only by the parks and recreation department and only for off-highway vehicle safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor-powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting the safety fee.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 343****HOUSE BILL NO. 1318**

(Representatives Nelson, Boe, Delmore, D. Johnson)  
(Senators Horne, Olafson)

AN ACT to amend and reenact subsection 7 of section 39-24-09 of the North Dakota Century Code, relating to snowmobile travel.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~When snowmobiles are~~ If a snowmobile is operated within the right of way of any road, street, or highway of this state pursuant to under this chapter, during times or conditions that warrant the use of lights, such snowmobiles the snowmobile operator shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile. An operator of a snowmobile traveling on a snowmobile trail maintained by the parks and recreation department which is within the right of way of any road, street, or highway of this state is exempted from this rule. The operator shall wait for all traffic to clear the roadway before crossing bridges and other similar structures.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 344****SENATE BILL NO. 2378**

(Senators O'Connell, Flakoll, Potter)

(Representatives Gruchalla, R. Kelsch, Nelson)

AN ACT to amend and reenact subsections 2 and 3 of section 39-29-03 and subsection 2 of section 39-29-05 of the North Dakota Century Code, relating to off-highway vehicle registration and the disposition of registration fees and trail tax.

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

**SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 39-29-03 of the North Dakota Century Code are amended and reenacted as follows:

2. On receipt of an application and the appropriate fee, the department shall register the off-highway vehicle and assign a registration number and a certificate of registration. In addition, the department shall issue a decal made of reflectorized material which contains the registration number or the department shall issue one distinctive number plate upon the request of the owner. The operator of an off-highway vehicle shall securely affix and display the decal or the plate in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
3. The fee for registration of each off-highway vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each off-highway vehicle registered under this chapter, there is an off-highway vehicle trail tax of ~~five~~ fifteen dollars.

**SECTION 2. AMENDMENT.** Subsection 2 of section 39-29-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The off-highway vehicle trail tax must be deposited in a ~~state~~ the off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing off-highway vehicle facilities, ~~off-highway vehicle~~ use areas, and ~~off-highway vehicle~~ safety and education programs, and on enforcement of this chapter. The department may also use the fund to make grants to political subdivisions, governmental agencies, and nonprofit organizations for the purpose of developing and improving off-highway vehicle facilities and use areas and on promoting off-highway vehicle safety and education. The department may also use the fund to make grants to law

enforcement agencies for the purpose of enforcing laws applicable to off-highway vehicles and to the use of off-highway vehicle facilities and use areas.

Approved April 7, 2009  
Filed April 9, 2009

**CHAPTER 345****HOUSE BILL NO. 1295**

(Representatives Kempenich, DeKrey, Heller, Vig)  
(Senators Klein, Miller)

AN ACT to create and enact chapter 39-29.2 of the North Dakota Century Code, relating to unconventional vehicles; and to amend and reenact subdivision c of subsection 3 of section 39-06-14 and subsection 3 of section 39-27-05 of the North Dakota Century Code, relating to motorcycles.

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

<sup>144</sup> **SECTION 1. AMENDMENT.** Subdivision c of subsection 3 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

- c. A driver with a class M license may operate any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, and tractors, ~~and vehicles on which the operator or passengers, or both, ride within an enclosed cab.~~ A class M vehicle may not be operated under a class A, B, C, or D license.
  - (1) The holder of a class A, B, C, or D license may receive a class M endorsement upon successful completion of an examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.
  - (2) An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class M learner's permit after successful completion of a written examination. The class M license will be issued after the applicant has successfully completed a driver's examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.
  - (3) Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age shall hold an initial learner's permit for at least two months before applying for a class M operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. The director may waive the

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<sup>144</sup> Section 39-06-14 was also amended by section 2 of Senate Bill No. 2067, chapter 330.

skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.

**SECTION 2. AMENDMENT.** Subsection 3 of section 39-27-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Wheel rim diameters may not be less than ten inches [25.4 centimeters] or otherwise comply with title 49, Code of Federal Regulations, part 571, Federal Motor Vehicle Safety Standards, and must otherwise comply with applicable state standards, as promulgated by the director. Two-wheel motorcycles using low pressure tires are exempt from this subsection if the inflated height of the tire is twenty inches [508 millimeters] or greater.

**SECTION 3.** Chapter 39-29.2 of the North Dakota Century Code is created and enacted as follows:

**39-29.2-01. Definitions.** As used in this chapter unless the context otherwise requires:

1. "Identifying number" means the vehicle identification numbers and letters if any assigned by the manufacturer or by the department for the purpose of identifying a vehicle. The term includes any numbers or letters assigned by the manufacturer for the purpose of identifying a part of a vehicle or any number placed on a part in accordance with this chapter or rules of the department for the purpose of identifying the vehicle.
2. "Unconventional vehicle" means a motor vehicle that is designed to travel on at least three wheels in contact with the ground, has an unladen weight of at least three hundred pounds [136.08 kilograms] but less than eight thousand pounds [3628.7 kilograms], has a permanent upright seat or saddle for the driver which is mounted at least twenty-four inches [50.8 centimeters] from the ground, has a steering device for front wheel steering control, is capable of speeds in excess of sixty-five miles [104.61 kilometers] per hour, complies with equipment listed in chapter 39-21 or 39-27, as appropriate, and has an identifying number. The term does not include motor vehicles that otherwise may be registered under this title.

**39-29.2-02. Certificate of title for unconventional vehicle.** The department shall issue a certificate of title for an unconventional vehicle in accordance with section 39-05-05.

**39-29.2-03. Registration of unconventional vehicle.**

1. Registration of an unconventional vehicle is governed by this chapter.

2. An individual may not operate an unconventional vehicle on public roadways unless the vehicle has been registered under this chapter.
3. The department shall design and furnish an application that must be used to register an unconventional vehicle. The registration must state the name and address of every owner of the unconventional vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
4. On receipt of an application and the appropriate fee, the department shall register an unconventional vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, identifying number, and name and address of the owner.
5. The fee for registration of an unconventional vehicle is fifty dollars per year. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
6. To renew a registration, the owner of an unconventional vehicle shall follow the procedure adopted by the department and pay the registration fee.
7. The department shall issue a plate in the same manner as a plate is issued to a motorcycle.
8. Funds collected from registration must be deposited in the motor vehicle registration fund.

**39-29.2-04. Operation of unconventional vehicle.** To operate an unconventional vehicle on a highway, the operator must be a licensed driver. An operator may operate an unconventional vehicle on any highway except an access-controlled highway.

Approved May 1, 2009  
Filed May 4, 2009

# MUNICIPAL GOVERNMENT

## CHAPTER 346

### HOUSE BILL NO. 1346

(Representatives Kretschmar, Kilichowski)  
(Senators Anderson, Nodland)

AN ACT to amend and reenact section 40-01.1-02 of the North Dakota Century Code, relating to the placement of a question on the ballot to establish a local advisory study committee.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-01.1-02. Local advisory study committee.**

1. The governing body or electors of a county, city, city park district, township, school district, or any other political subdivision of this state may establish an advisory committee to study the existing form and powers of that political subdivision for comparison with other forms and powers available under the laws of this state. A local advisory study committee is established:
  - a. By a majority vote of the governing body; or
  - b. By a petition signed by ten percent or more of the total number of qualified electors of the political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing body.
2. ~~Notwithstanding subsection 1, an election on the question of establishing a five-member advisory study committee for a county or city must be held at the next regular election in the county or city if five years have elapsed since the latter of:~~
  - a. ~~August 1, 1993;~~
  - b. ~~The date of the most recent election held on the question of establishing an advisory study committee pursuant to this subsection; or~~
  - c. ~~The date of issue of a written report prepared for a comprehensive study and analysis of the cooperative and restructuring options available to the county or city conducted by the governing body, an advisory study committee established pursuant to this section, a home rule charter commission, or through another study process for which a written report was prepared.~~

- ~~3.~~ The question of establishing an advisory study committee pursuant to subsection 2 requires an affirmative vote of a majority of those voting on the question for passage.
4. 2. The governing body shall appoint the members of the advisory study committee and set the duration of the committee. The members are not entitled to receive compensation, but may receive actual and necessary expenses incurred in the performance of official duties as determined by the governing body.
5. 3. The governing body may provide office and meeting space and legal, clerical, facilitation, training, and other assistance to the study committee, and may appropriate funds in its final budget, or expend any unexpended balances in its general fund otherwise designated for current expenditure, for the necessary expenses of the advisory study committee. The committee, with the approval of the governing body, may:
- a. Employ and fix the compensation and duties of necessary staff;
  - b. Contract and cooperate with other individuals and public or private agencies considered necessary for assistance, including institutions of higher education;
  - c. Establish advisory subcommittees that may include persons who are not members of the study committee;
  - d. Hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the committee's purpose, progress, conclusions, and recommendations;
  - e. Cooperate with a like committee established pursuant to this section by another political subdivision in the conduct of the study. A cooperative study does not preclude a study committee from making separate recommendations to the governing body; and
  - f. Do any other act consistent with and reasonably required to perform its advisory function.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 347****SENATE BILL NO. 2191**

(Senators Anderson, Cook)  
(Representatives Frantsvog, Kaldor)

AN ACT to amend and reenact subsection 23 of section 40-05-02 of the North Dakota Century Code, relating to a city lien on unfit property.

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

**SECTION 1. AMENDMENT.** Subsection 23 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

23. Substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair, or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance must provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It must also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such governing body to a court of competent jurisdiction. The amount of the cost of any demolition, repair, or removal of a building or structure constitutes a lien against the real property from which the cost was incurred and the lien may be foreclosed in judicial proceedings in the manner provided by law for loans secured by liens on real property. If this amount is not adequate to cover the cost of demolition, repair, or removal, the city has a lien for the amount of the additional costs on all real property owned, or later acquired, by the owner in the city. If the city provides the amount of the lien and the name of the owner, the county auditor shall enter on the tax list the amount of the additional cost as a tax lien. The tax lien is enforceable by the city in the same manner as a tax lien by a county. This subsection in no way limits or restricts any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 348****SENATE BILL NO. 2441**

(Senators Holmberg, Schneider)

(Representative Dahl)

(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 40-23-07 of the North Dakota Century Code, relating to treatment of nonprofit cemetery property for special assessment purposes; to provide a statement of legislative intent; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 40-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-23-07. Determination of special assessments by commission - Political subdivisions not exempt.** Whenever the commission makes any special assessment, the commission shall determine the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The commission shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as ~~shall be~~ is necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment, including all expenses incurred in making such assessment and publishing necessary notices with reference thereto and the per diem of the commission. However, as an alternative to the procedure ~~heretofore~~ provided in this section, the special assessment commission may, in its discretion, determine and allocate the cost of special assessments in accordance with the method provided for in chapter 40-23.1. Property owned by a nonprofit entity and used exclusively as a cemetery is exempt from collection of special assessments for benefits conferred under this title and the city in which such property is located shall provide for the payment of special assessments, installments, and interest against such property by the levy of taxes according to law or by payment from other funds available to the city which are derived from sources other than special assessments. Benefited property belonging to counties, cities, school districts, park districts, and townships ~~shall~~ is not be exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law. Nothing in this section ~~shall~~ may be deemed to amend other provisions of law with reference to the levy of assessments on property sold for delinquent taxes.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly by enactment of this Act to provide for payment of special assessments against nonprofit cemetery property, including outstanding unpaid obligations, through levy of general property taxes within the city in recognition of the public benefit provided by operation of nonprofit cemeteries.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for collection of special assessments regardless of the date of the assessment.

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

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 349****HOUSE BILL NO. 1420**

(Representatives Frantsvog, Hofstad, Nathe)  
(Senator Anderson)

AN ACT to amend and reenact section 40-40-10 of the North Dakota Century Code, relating to certified copies of the municipal levy and final budget being sent to the county auditor.

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

**SECTION 1. AMENDMENT.** Section 40-40-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-40-10. Certified copies of levy and final budget sent to county auditor.** Immediately after the completion of the final budget and the adoption of the annual tax levy by the governing body of a municipality in accordance with the provisions of this chapter, and in no case later than October tenth, the auditor of the municipality shall send to the county auditor ~~two~~ a certified ~~copies~~ copy of the levy as adopted and ~~two~~ a certified ~~copies~~ copy of the final budget.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 350

### HOUSE BILL NO. 1554

(Representatives Damschen, D. Johnson, Wrangham)  
(Senator Klein)

AN ACT to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide legislative intent; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all

political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;

- e. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
- a. (1) One mile [1.61 kilometers] if the city has a population of less fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b. (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - e. (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22



regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
- ~~3-~~ 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- 4- 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- ~~5-~~ 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in

the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 10. For the purposes of this section, a section or a quarter quarter section shall be is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that land use regulations under consideration by local governments be readily available to the public. Local governments are encouraged to jointly discuss their land use regulations and consider the cumulative impact of local regulations.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 4, 2009  
Filed May 5, 2009

# CHAPTER 351

## SENATE BILL NO. 2270

(Senators Robinson, Lyson)

(Representatives Bellew, Metcalf, Mueller)

AN ACT to amend and reenact section 40-49-14 of the North Dakota Century Code, relating to bid requirements for park districts; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-14. When ye and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.** Ye and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and ~~this shall be~~ is sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapter 48-01.2, all contracts exceeding ~~ten~~ twenty-five thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body; ~~in its discretion,~~ may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

### CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here \_\_\_\_\_

\_\_\_\_\_   
 If signed for a firm or company,   
 show authority on this line.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 352****HOUSE BILL NO. 1266**  
(Representatives Klemin, Mueller)  
(Senators Cook, Krebsbach)

AN ACT to amend and reenact subsection 2 of section 40-57-02, subsection 11 of section 40-57-03, sections 40-57-04, 40-57-05, 40-57-07, and 40-57-14, and subsection 1 of section 40-57-19.1 of the North Dakota Century Code, relating to municipal industrial development bonds.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on ~~such~~ the real property or in ~~such~~ the buildings, or elsewhere, or personal property, including working capital, which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more ~~such~~ revenue-producing enterprises, engaged or to be engaged in:
  - a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
  - b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
  - c. Providing child care facilities or hospital, nursing home, or other health care facilities and service.
  - d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
  - e. Public career and technical education.
  - f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in this subsection.

**SECTION 2. AMENDMENT.** Subsection 11 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

11. Issue ~~said~~ revenue bonds to refund, in whole or in part, bonds previously issued ~~by such municipality~~ under ~~authority~~ of this chapter.

**SECTION 3. AMENDMENT.** Section 40-57-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-04. Resolution authorizing project and the issuance of revenue bonds - Public notice and hearing - No election required.** The acquisition, construction, reconstruction, improvement, betterment, extension, or financing of any project, and the issue of bonds in anticipation of the collection of the revenues of ~~such the~~ project to provide funds to pay for the cost ~~thereof of the project~~, may be authorized by an ordinance or resolution of the governing body adopted at a regular or ~~special meeting thereof of the governing body~~ by the affirmative vote of a majority of its members. ~~Prior to~~ Before the issuance of revenue bonds under ~~authority of~~ this chapter, the governing body shall give notice and hold a public hearing on the proposed bond issue. Notice of the hearing ~~shall must~~ be published in the official newspaper of the municipality once a week for two successive weeks ~~prior to before~~ the time set for the hearing. The notice ~~shall must~~ specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The governing body ~~shall may~~ not approve the bond issue unless it appears, after the public hearing, that ~~such~~ approval is in the public interest of the municipality. Except as provided in section 40-57-19, no election ~~shall be is~~ required to authorize the use of any of the powers conferred by this chapter. No public hearing is required ~~prior to before~~ the issuance of refunding bonds issued ~~pursuant to under~~ section 40-57-19.1.

**SECTION 4. AMENDMENT.** Section 40-57-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-05. Notice to securities commissioner - Approval of public officer not required.** ~~Upon the issuance of bonds under this chapter, the contracting party shall furnish the state securities commissioner the following information concerning the project:~~

- ~~1. The name of the contracting party.~~
- ~~2. The location and nature of the project.~~
- ~~3. The amount and nature of the bonds issued.~~
- ~~4. The general terms and nature of the financing arrangement.~~
- ~~5. A copy of the official statement of the offering, if one was prepared.~~

The consent of any governmental body or public officer of the state ~~shall is not be~~ required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

**SECTION 5. AMENDMENT.** Section 40-57-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-07. Cost of project - How determined.** In determining the cost of a project, the governing body may include all costs and estimated costs of the issuance of the revenue bonds; all engineering, inspection, fiscal, and legal expenses; any bond reserves and the interest that it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed ~~pursuant to under~~ this chapter; and ~~with respect to any hospital, nursing home, or other health care facilities comprising a project, the cost of retiring any existing indebtedness in connection with the project which that~~ the governing body of the municipality determines to be necessary or desirable and in

furtherance of the public health or welfare, ~~regardless of whether or not such~~ the existing indebtedness constitutes all or a portion of the cost being financed by the issuance of the bonds.

**SECTION 6. AMENDMENT.** Section 40-57-14 of the North Dakota Century Code is amended and reenacted as follows:

**40-57-14. Covenants that may be inserted in ordinance or resolution authorizing bonds.**

1. Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the cost of any project may contain covenants, notwithstanding that ~~such~~ the covenants may limit the exercise of powers conferred by this chapter, as to:
  - 1- a. The rents or payments to be charged with respect to the project.
  - 2- b. The use and disposition of the revenues of ~~said~~ the projects.
  - 3- c. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof.
  - 4- d. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties ~~which~~ that are subject to depreciation.
  - 5- e. The purpose, or purposes, to which the proceeds of this sale of ~~said~~ bonds may be applied and the use and disposition of ~~said~~ the proceeds.
  - 6- f. The nature of mortgages or other encumbrances on the project made in favor of the holder ~~or holders~~ of ~~such~~ the bonds, or a trustee therefor.
  - 7- g. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on ~~said~~ the bonds or on any coupons thereof.
  - 8- h. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of ~~said~~ the project.
  - 9- i. The insurance to be carried upon the project and the use and disposition of insurance moneys.
  - 10- j. The keeping of books of account and the inspection and audit thereof.
  - 11- k. The terms and conditions upon which ~~any or all of~~ the bonds ~~shall~~ become or may be declared due before maturity and the terms and conditions upon which ~~such~~ the declaration and its consequences may be waived.
  - 12- l. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations.

43. m. The vesting in a trustee ~~or trustees~~ of the rights to enforce any covenants made to secure, to pay, or in relation to, the bonds and the powers and duties of ~~such the~~ trustee ~~or trustees~~ and the limitation of liabilities thereof.
44. n. The terms and conditions upon which the holder ~~or holders~~ of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby.
45. o. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which ~~such~~ consent may be given.
46. p. The subordination of the security of any bonds issued ~~hereunder~~ and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of ~~the~~ a municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.
2. Nothing in this ~~section, or in this~~ chapter, except as provided in section 40-57-19, ~~shall authorize~~ authorizes any municipality to do anything or for any purpose ~~which that~~ would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument ~~which that~~ would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

**SECTION 7. AMENDMENT.** Subsection 1 of section 40-57-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any municipality is authorized to provide for the issuance of refunding bonds to refund, in whole or in part, bonds previously issued ~~by such municipality~~ under the authority of this chapter for any of the following purposes:
  - a. To extend the maturities of the outstanding bonds.
  - b. To consolidate or restructure or reduce the debt service of the outstanding bonds.
  - c. To remove covenants made with respect to the issuance of the outstanding bonds.

## CHAPTER 353

### SENATE BILL NO. 2060

(Legislative Council)  
(Workforce Committee)

AN ACT to amend and reenact subsection 7 of section 40-63-01, subdivision g of subsection 1 of section 40-63-03, and sections 40-63-04 and 40-63-05 of the North Dakota Century Code, relating to renaissance zone rehabilitation of public utility infrastructure and renaissance zone boundaries; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 7 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Rehabilitation", as used in sections 40-63-04 and 40-63-05, means the repair or remodeling of a building or public utility infrastructure at a cost that is equal to or exceeds fifty percent of the current true and full value for commercial buildings or public utility infrastructure and twenty percent for single-family homes.

<sup>145</sup> **SECTION 2. AMENDMENT.** Subdivision g of subsection 1 of section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

- g. The proposed renaissance zone may have a single exception to the continuous boundary and contiguous block requirements under subdivision d if the area of the excepted noncontiguous blocks does not exceed three square blocks ~~and if the shortest distance between the noncontinuous boundaries of the two portions of the zone does not exceed one-half mile [-80 kilometer].~~

<sup>146</sup> **SECTION 3. AMENDMENT.** Section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-63-04. Income tax exemptions.**

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.

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<sup>145</sup> Section 40-63-03 was also amended by section 1 of House Bill No. 1428, chapter 354, and section 30 of House Bill No. 1436, chapter 482.

<sup>146</sup> Section 40-63-04 was also amended by section 6 of House Bill No. 1324, chapter 545.

2. Any taxpayer that purchases, leases, ~~or~~ rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purpose as a zone project is exempt from any tax on income derived from the business or investment locations within the zone for five taxable years, beginning with the date of purchase, lease, or completion of rehabilitation.
3. If the cost of a new business purchase, leasehold improvement, or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section 57-38-29 or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.
4. If a property owner not participating in a renaissance zone project is required to make changes in utility services or in a building structure because of changes made to property that is part of a zone project, the owner of the nonparticipating property is entitled to state income tax credits equal to the total amount of the investment necessary to complete the required changes. The credit must be approved by the local renaissance zone authority. The credit must be claimed in the taxable year in which the related project was completed. The credit may not exceed the taxpayer's tax liability, and an unused credit may be carried forward up to five taxable years.
5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter 57-35.3 or 57-38.

**SECTION 4. AMENDMENT.** Section 40-63-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-63-05. Property tax exemptions.**

1. A municipality may grant a partial or complete exemption from ad valorem taxation on single-family residential property, exclusive of the land on which it is situated, if the property was purchased or rehabilitated by an individual for the individual's primary place of residence as a zone project. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition or completion of rehabilitation.
2. A municipality may grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements purchased or rehabilitated as a zone project for any business or investment purpose. The state board of equalization may grant a partial or complete exemption from ad valorem taxation on public utility infrastructure rehabilitated as a zone project. An exemption under this subsection may not extend beyond five taxable years following the date of purchase or completion of rehabilitation.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 30, 2009

Filed May 1, 2009

## CHAPTER 354

### HOUSE BILL NO. 1428

(Representatives Thoreson, Dosch, S. Kelsh, Kempenich)  
(Senators Holmberg, Triplett)

AN ACT to amend and reenact subdivisions c and f of subsection 1 of section 40-63-03 and subsection 5 of section 40-63-07 of the North Dakota Century Code, relating to extension of the duration of a renaissance zone program, available income tax credits for renaissance zone investments, and designation of additional blocks as part of a renaissance zone; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>147</sup> **SECTION 1. AMENDMENT.** Subdivisions c and f of subsection 1 of section 40-63-03 of the North Dakota Century Code are amended and reenacted as follows:

- c. The proposed renaissance zone is not more than twenty-three square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed twenty-three square blocks at the rate of one additional block for each additional five thousand population to a maximum size of thirty-eight blocks. Population is based upon the most recent federal decennial census.

If a city finds that renaissance zone projects have satisfactorily completed one or more blocks within the renaissance zone, the city may apply for and the department of commerce division of community services may approve withdrawal of those blocks from the renaissance zone and replacement of those blocks with other blocks that otherwise meet the requirements of this chapter.

- f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years. Upon application by the city, the department of commerce division of community services may extend the duration of renaissance zone status in increments of up to five years.

<sup>148</sup> **SECTION 2. AMENDMENT.** Subsection 5 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The total amount of credits allowed under this section may not exceed, in the aggregate, ~~an initial limit of two million five hundred thousand~~

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<sup>147</sup> Section 40-63-03 was also amended by section 30 of House Bill No. 1436, chapter 482, and section 2 of Senate Bill No. 2060, chapter 353.

<sup>148</sup> Section 40-63-07 was also amended by section 8 of House Bill No. 1324, chapter 545, and section 98 of House Bill No. 1436, chapter 482.

dollars. Upon exhaustion of this initial limit, an additional two seven million five hundred thousand dollars in credits is available for investments in renaissance fund organizations. A renaissance fund organization that has received investments that qualify for these additional credits under this subsection may not use more than fifty percent of such investments for organization investments outside of a renaissance zone.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

# UNIFORM COMMERCIAL CODE

## CHAPTER 355

### SENATE BILL NO. 2206

(Senator Nething)  
(Representative Klemin)

AN ACT to amend and reenact section 41-09-84 of the North Dakota Century Code, relating to the effectiveness of a Uniform Commercial Code termination statement; and to provide for retroactive application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 41-09-84 of the North Dakota Century Code is amended and reenacted as follows:

#### **41-09-84. Termination statement - Remedies - Fees.**

1. If a financing statement covering consumer goods is filed after December 31, 1973, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which must be identified by file number. In other cases when there is no outstanding secured obligation and no written commitment between the secured party and the debtor to make advances, incur obligations, or otherwise give value, the secured party, unless requested by the debtor in writing to continue the filing, must send to each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement nor under the central notice system, which shall be identified by file number. If the affected secured party fails to file a termination statement as required by this subsection within sixty days of when the secured obligation is fully satisfied, and the debtor has not requested in writing that the filing be continued, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure. The debtor's written request for a filing to be continued may be made at any time and be effective under this section. If the affected secured party fails to file a termination statement within ten days after proper written demand by the debtor, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure.
2. Except as otherwise provided in section 41-09-81, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as provided in section 41-09-81, for purposes of subsection 7 of section

41-09-90, subsection 1 of section 41-09-93, and subsection 3 of section 41-09-94, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

- ~~2-~~ 3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, is five dollars. For any financing statement filed after April 8, 1991, the fee must be paid at the time the fee for filing the financing statement is paid.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to termination statements filed with the filing office after July 31, 2001.

Approved April 8, 2009

Filed April 9, 2009

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 356

### SENATE BILL NO. 2299

(Senator Christmann)  
(Representative Grande)

AN ACT to create and enact a new section to chapter 43-01 of the North Dakota Century Code, relating to utility easement abstracts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 43-01 of the North Dakota Century Code is created and enacted as follows:

**Utility easement documentation abstracts upon request.** Upon request, an abstracter shall furnish an abstract to title to the surface of any tract of land omitting documents that affect utility easements, except for the initial document severing the interest from the surface and a document limiting, modifying, or releasing the interest. In addition and upon request, an abstracter shall furnish a list showing the names of the grantor and grantee and the recording data of all related documents pertaining to a utility easement which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of up to one dollar and fifty cents.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 357****HOUSE BILL NO. 1147**

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Accountancy)

AN ACT to amend and reenact sections 43-02.2-02, 43-02.2-04, and 43-02.2-04.1, subsections 1 and 5 of section 43-02.2-06, subsection 1 of section 43-02.2-09, section 43-02.2-10, subsections 1 and 3 of section 43-02.2-11, and subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code, relating to certified public accountants and the practice of public accountancy.

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

**SECTION 1. AMENDMENT.** Section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-02.2-02. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Board" means the state board of accountancy.
2. "Certificate" means a certificate as "certified public accountant" issued under section 43-02.2-04 or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Client" means a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship.
4. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.
5. "Licensee" means the holder of a certificate, license, or permit issued under this chapter or prior law.
6. "NASBA national qualification appraisal service" means the section of the national association of state boards of accountancy that either reviews the CPA licensure requirements of its member jurisdictions to determine which CPA licensure requirements are substantially equivalent to the licensure requirements of the Uniform Accountancy Act or evaluates the credentials of individuals who are licensed in jurisdictions that are not substantially equivalent to determine their individual substantial equivalency.
- ~~7.~~ 8. "Permit" means a permit to practice public accountancy issued under section 43-02.2-06 or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.
- ~~7.~~ 8. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, services involving the use of

accounting or auditing skills including the issuance of reports on financial statements, but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a firm with a permit issued under section 43-02.2-06 or ~~43-02.2-07~~ of certified public accountants or licensed public accountants.

9. "Practice privilege" means the privilege for a person to practice public accountancy described in, and subject to the conditions contained in, subsection 1 of section 43-02.2-04.1.
8. 10. "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the person or firm being reviewed.
11. "Principal place of business" means the office location designed by the licensee for purposes of substantial equivalence and reciprocity.
9. 12. "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.
40. 13. "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.
44. 14. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
42. 15. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, ~~and~~ Guam, and the Commonwealth of the Northern Mariana Islands.
43. 16. "Substantial equivalency", as used in section 43-02.2-04, pertaining to certification by reciprocity, and in section 43-02.2-04.1, pertaining to the practice privilege, is a determination by the board or its designee that another jurisdiction's education, examination, and experience requirements are comparable to or exceed that of the Uniform Accountancy Act, or that an individual's education, examination, and experience qualifications are comparable to or exceed that of the

Uniform Accountancy Act. In ascertaining substantial equivalency as used in this chapter, the board shall take into account the qualifications without regard to the sequence in which experience, education, or examination requirements were attained.

**SECTION 2. AMENDMENT.** Section 43-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-02.2-04. Certified public accountants.**

1. The board shall grant the certificate of "certified public accountant" to any person of good moral character who meets the requirements of this section.
2. For the purposes of this chapter, good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.
3. The board shall grant or renew certificates to persons who make application and demonstrate that their qualifications are in accordance with the following:
  - a. The board shall issue a certificate to a holder of a certificate, license, or permit issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:
    - a- The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state; is eligible under the substantial equivalency standard set out in subsection 1 of section 43-02.2-04.1. An application under this section may be made through the NASBA qualification appraisal service.
    - b. The applicant With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in subdivision a, the board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that:
      - (1) Meets all current requirements in this state for issuance of a certificate, at the time application is made; or The applicant passed the uniform CPA examinations;
      - (2) At the time of the issuance of the applicant's certificate in the other state, met all such requirements then applicable in this state; and The applicant had four years of experience of the

type described in subsection 14 or meets comparable requirements prescribed by the board by rule, after passing the examination upon which the applicant's certificate was based and within ten years immediately preceding the application; and

- (3) If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection 15.
- c. The applicant ~~has paid~~ shall pay the applicable ~~fees~~ fee.
- d. An individual who establishes that individual's principal place of business in this state must obtain a certificate under this section.
4. The board shall issue a certificate to a holder of a recognized accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
- Meets the good moral character requirement of subsection 2;
  - Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education and experience requirements then applicable in this state;
  - Has completed examinations generally equivalent to those prescribed under subsection 6;
  - Has satisfactorily completed any additional examinations that the board prescribes; and
  - Has paid the applicable fees.
5. The education requirement for a certificate is as follows:
- Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
  - After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board

rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.

6. The examination required to be passed as a condition for the granting of a certificate must test the applicant's knowledge of the subjects of accounting and auditing. ~~A grade of seventy-five percent is required in each subject to constitute a passing grade.~~ The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination.
7. An applicant must pass the examination provided for in subsection 6, as specified by rule, in order to qualify for a certificate.
8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.
9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances under which the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for examination or reexamination.
11. A certificate of certified public accountant must be renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.
13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized accounting designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after

its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized accounting designation by another state or jurisdiction.

14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. ~~As an alternative to the requirements of subsection 3, the board shall issue a certificate to an individual who holds a certificate from another state, who establishes the individual's principal place of business within this state and has submitted the applicable application and fees, provided that the individual or the other state has attained substantial equivalency.~~

**SECTION 3. AMENDMENT.** Section 43-02.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-02.2-04.1. Substantial equivalency.**

1. An individual whose principal place of business is not in this state shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under section 43-02.2-04, if the individual holds a valid ~~certificate~~ license as a CPA from any state that ~~has attained substantial equivalency~~ the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, or, if the individual's CPA qualifications are deemed to meet substantial equivalency license is not from any state ~~which the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, that the individual has obtained from the NASBA national qualification appraisal service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act. An individual who passed the uniform CPA examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in the Uniform Accountancy Act for purposes of this section.~~

2. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means, under this section shall be granted practice privileges in this state and may use the title "CPA" or "certified public accountant" and no notice, fee, or other submission shall be provided by any such individual. Such an individual is subject to the requirements of subsection 3.
3. Individuals intending to enter the state under this provision shall submit the applicable application and fees prior to entry. Any individual licensee of another state exercising the privilege afforded under this section and the firm that employs that licensee hereby ~~consent~~ simultaneously consent, as a condition of the grant of this privilege:
- a. To the personal and subject matter jurisdiction and disciplinary authority of the board;
  - b. To comply with this chapter and the board's rules;~~and~~
  - c. That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm; and
  - d. To the appointment of the state board which issued the person's ~~certificate~~ license as the person's agent upon whom process may be served in any action or proceeding by this board against the licensee.
- ~~2.~~ 4. A licensee of this state offering or rendering services or using the licensee's CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

**SECTION 4. AMENDMENT.** Subsections 1 and 5 of section 43-02.2-06 of the North Dakota Century Code are amended and reenacted as follows:

1. A firm must hold a firm permit issued by the board, in order to practice public accounting or to use the titles "CPAs", "LPAs", "CPA firm", "LPA firm", or similar titles. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section. The board shall grant or renew permits to practice as a CPA or LPA firm to applicants that demonstrate their qualifications therefor in accordance with this subsection.
  - a. The following must hold a permit issued under this subsection:
    - (1) Any firm with an office in this state practicing public accountancy as defined in subsection 8 of section 43-02.2-02; or
    - (2) Any firm with an office in this state that uses the title "CPA", "LPA", "CPA firm", or "LPA firm", or similar titles.

- b. A firm which is not subject to the requirements of subdivision a may perform professional services within the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without a permit issued under this subsection only if:
- (1) It performs such services through an individual with practice privileges under subsection 1 of section 43-02.2-04.1; and
  - (2) It can lawfully do so in the state where such individuals with practice privileges have their principal place of business.
5. The board ~~shall~~ may charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may revoke any certificate, license, practice privilege, or permit issued under this chapter or corresponding provisions of prior law; suspend any such certificate, license, practice privilege, or permit or refuse to renew any such certificate, license, practice privilege, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee or holder of a practice privilege; impose an administrative fine not exceeding one thousand dollars; or place any licensee or holder of a practice privilege on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:
  - a. Fraud or deceit in obtaining a certificate, license, practice privilege, or permit;
  - b. Cancellation, revocation, suspension, or refusal to renew a certificate, license, practice privilege, or permit in any other state or jurisdiction for any cause;
  - c. Failure, on the part of a holder of a certificate, license, practice privilege, or permit, to maintain compliance with the requirements for issuance or renewal of such certificate, license, practice privilege, or permit or to report changes to the board under section 43-02.2-04, 43-02.2-06, or 43-02.2-07;
  - d. Revocation or suspension of the right to practice before any state or federal agency;
  - e. Dishonesty, fraud, or gross negligence in the performance of services as a licensee or in the filing or failure to file the licensee's own income tax returns;
  - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
  - g. Violation of any rule of conduct adopted by the board under section 43-02.2-03;

- h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- i. Performance of any fraudulent act while holding a certificate, license, practice privilege, or permit issued under this chapter or prior law;
- j. Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee; and
- k. Making any false or misleading statement or verification, in support of an application for a certificate, license, or permit filed by another.

**SECTION 6. AMENDMENT.** Section 43-02.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-02.2-10. Enforcement procedures - Investigations.** If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, practice privilege, or permit of any licensee or holder of a practice privilege, the ~~licensee~~ individual or firm has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. During the investigation of any complaint or other information suggesting violations of this chapter, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the pending investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

**SECTION 7. AMENDMENT.** Subsections 1 and 3 of section 43-02.2-11 of the North Dakota Century Code are amended and reenacted as follows:

1. If the board has suspended, refused to renew, or revoked a certificate, license, practice privilege, or a permit, the board may modify the suspension or reissue the certificate, license, practice privilege, or permit upon application in writing by the person or firm affected and for good cause shown and payment of a fee established by the board.
3. Before reissuing or terminating the suspension of a certificate, license, practice privilege, or permit under this section, the board may require the applicant to show successful completion of specified continuing education and may make the reinstatement conditional and subject to specified conditions, including satisfactory completion of a practice review conducted as specified by the board.

**SECTION 8. AMENDMENT.** Subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code are amended and reenacted as follows:

1. A person or firm that is not a licensee or otherwise authorized to practice in this state under subsection 1 of section 43-02.2-04.1 or subdivision b of subsection 1 of section 43-02.2-06 may not practice or offer to practice public accountancy or issue a report on financial statements of any other person, firm, organization, or governmental unit. Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter or is otherwise exempt from the firm permit requirement. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing the person's name or signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".
2. A person not holding a valid certificate or practice privilege issued under this chapter may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
3. A firm may not practice public accountancy or assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a certified public accountant firm unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
5. A firm may not practice public accountancy, or assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a licensed public accountant firm unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
6. A person or firm not holding a valid certificate, license, practice privilege, or permit issued under this chapter or otherwise exempt from the firm permit requirement may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA".

7. A person or firm not holding a valid certificate, license, practice privilege, or permit issued under this chapter or otherwise exempt from such requirement may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a certificate, license, or permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's name or signature to any reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does not prohibit any act of a public official or employee in the performance of duties.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 358

### HOUSE BILL NO. 1330

(Representatives Keiser, Ekstrom, Thoreson)  
(Senators Grindberg, Klein, Triplett)

AN ACT to amend and reenact sections 43-03-01, 43-03-02, 43-03-03, 43-03-04, 43-03-05, 43-03-06, 43-03-08, 43-03-09, 43-03-10, 43-03-11, 43-03-13, 43-03-14, 43-03-15, 43-03-16, 43-03-17, 43-03-18, 43-03-19, 43-03-20, and 43-03-22 of the North Dakota Century Code, relating to the regulation of architects and landscape architects; to repeal sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code, relating to the regulation of architects and landscape architects; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-01. Definitions.** In this chapter, unless the context of the subject matter otherwise requires:

1. "Architect" means an individual who is registered as an architect under this chapter.
2. "Board" means the state board of architecture and landscape architecture.
3. "Landscape architect" means an individual who practices is registered as a landscape architecture architect under this chapter.
4. "Landscape architecture" does not include the practice of engineering and practice of professional engineering as defined under section 43-19.1-02.
5. "Practice of architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge and skill are required in connection with the erection, enlargement, or alteration of any building, or the equipment, or utilities thereof, or the accessories thereto if the safeguarding of the public health, safety, or welfare is concerned or involved. The term includes the making of architectural plans and specifications for buildings.
6. "Practice of landscape architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, landscape architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge

and skill are required in connection with landscape enhancement or landscape development, including the formulation of graphic or written criteria to govern the planning or design of land construction projects, production of overall site plans, landscape grading, and landscape drainage plans, planting plans, irrigation plans, and construction details if the safeguarding of the public health, safety, or welfare is concerned or involved.

**SECTION 2. AMENDMENT.** Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-02. Persons exempt from regulations.**

1. The architect registration provisions of this chapter do not apply to a person making plans and specifications for a building to be constructed by or for that person; a:
  - a. A person supervising the erection, enlargement, or alteration of a building being constructed by or for that person; a person preparing for a school board plans and specifications for, or supervising the erection or alteration of, one-room or two-room school buildings costing not to exceed five thousand dollars; or an employee of an architect acting under that architect's instruction, control, and supervision in preparing plans and specifications for the erection, enlargement, or alteration of buildings; or
  - b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:
    - (1) A private residence;
    - (2) A building that under applicable building code is not designed for occupancy by ten or more individuals, does not exceed two stories in height exclusive of a one-story basement, and is:
      - (a) A garage;
      - (b) A commercial or industrial building;
      - (c) An office building;
      - (d) A preengineered metal building;
      - (e) A building for the marketing, storage, or processing of farm products;
      - (f) A warehouse; or
      - (g) Rental apartment units;
    - (3) A farm building; or

- (4) A nonstructural alteration of any nature to any building if the alteration does not affect the safety of the occupants of the building.
2. The landscape architect registration provisions of this chapter do not apply to:
- An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;
  - A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare; or
  - An individual in the course of planning or otherwise caring for that individual's property; or
  - An irrigation designer, contractor, or service provider in the course of preparing irrigation plans or installing, repairing, or maintaining irrigation systems.
3. This chapter does not:
- Apply to an officer or employee of the United States government while engaged in governmental work in this state;
  - Curtail or extend the right of any other profession regulated in this state;
  - Prevent the independent employment of a registered professional engineer for any professional service related solely to civil, structural, mechanical, or electrical engineering in connection with any building or building project; or
  - Supersede, override, or amend the provisions of chapter 43-19.1 regarding registration of professional engineers and land surveyors.

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

**43-03-03. State board of architecture and landscape architecture - Members - Term of office - How vacancies filled.** The state board of architecture ~~must consist~~ and landscape architecture consists of three members appointed by the governor for terms of six years each with their terms of office so arranged that one term and only one expires on March fourteenth of each odd-numbered year. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until that member's successor is appointed and qualified, and any vacancy occurring in the board must be filled by the governor for the unexpired term.

**SECTION 4. AMENDMENT.** Section 43-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-04. Qualifications of members of board - Removal of members.** A Each member of the board must be a resident of this state who is an architect who has been a resident of and in active practice as principal in this state as an architect for not less than ~~three~~ five years prior to before appointment. The governor may remove any of the ~~members~~ member of the board for inefficiency or neglect of duty.

**SECTION 5. AMENDMENT.** Section 43-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-05. Meetings of board - Officers elected.**

1. The board shall hold regular meetings on the first Monday of April and of October of each year and may hold such special meetings as are necessary regular meetings at least once each year, with the date and location set by the board. The board may meet as designated by a majority of the board. The board shall select from among its members a president and a ~~secretary~~ secretary-treasurer.
2. The board may:
  - a. Administer an oath;
  - b. Take an affidavit;
  - c. Summon a witness;
  - d. Take testimony as to matters coming within the scope of the board's duties;
  - e. Enter an interstate or intrastate agreement or association with other boards of licensure for the purpose of establishing reciprocity, developing examinations, evaluating applicants, or other activities to enhance the services of the board to the state, the registrant, or the public; and
  - f. Appoint or contract an executive director and any other individual the board determines is necessary to administer the affairs of the board.
3. The board shall:
  - a. Adopt a seal to be affixed to each certificate of registration issued by the board;
  - b. Issue certificates of registration to qualified applicants; and
  - c. Adopt rules in accordance with chapter 28-32.
4. The secretary-treasurer shall keep a record of the proceedings of the board.

**SECTION 6. AMENDMENT.** Section 43-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-06. Salary of ~~secretary of board and members of board~~ executive director - Expenses of board.** The secretary of the board shall

1. If the board appoints or contracts an executive director, the executive director is entitled to receive such salary as must be fixed by a resolution of the board adopted at a regular meeting, and ~~also shall is~~ entitled to receive such traveling, hotel reimbursement for travel, lodging, and other expenses as are incurred legitimately in the performance of the ~~secretary's~~ executive director's official duties.
2. Each of the ~~other members~~ member of the board ~~shall is~~ entitled to receive ~~twenty-five a~~ per diem of ~~seventy-five~~ dollars for each day or portion thereof of a day spent in the discharge of the member's duties, such mileage as is provided for by section 54-06-09, and ~~must be reimbursed~~ is entitled to reimbursement for the member's actual and necessary expenses incurred in the discharge of the member's official duties.
3. The expenses of the board ~~and its officers~~ at no time may exceed the amount of moneys received and on deposit to the credit of the board under the provisions of this chapter.

**SECTION 7. AMENDMENT.** Section 43-03-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-08. Board to adopt rules.** The board ~~may~~ shall adopt rules:

1. To govern board proceedings.
2. For the examination of candidates for registration.
3. For the regulation of the practice of architecture and landscape architecture.
4. For education requirements of registration applicants.
5. For ~~continuing education of registrants~~ practical experience requirements of registration applicants.

**SECTION 8. AMENDMENT.** Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-09. Unauthorized practice prohibited Prohibited acts - Injunction.**

1. A person may not practice architecture in this state unless registered as an architect under this chapter or otherwise authorized by the board. After December 31, 2004, a A person may not practice landscape architecture in this state unless registered as a landscape architect under this chapter or otherwise authorized by the board.
2. A person may not fraudulently obtain or furnish a certificate of registration to practice architecture or landscape architecture.
3. A person that is not licensed under this chapter may not:
  - a. Advertise, represent, or in any manner hold that person out as an architect or landscape architect;

- b. In connection with the person's business or name, or otherwise, assume, use, or advertise any term, title, or description or engage in any other conduct that reasonably might be expected to mislead another to believe the person is an architect or landscape architect; or
  - c. Except as a copartnership of architects, engage in the practice of architecture or landscape architecture as a corporation.
4. Through the attorney general, the board may seek to enjoin a person from committing an act in violation of this chapter. The board is not required to prove irreparable injury to enjoin a violation of this chapter.

**SECTION 9. AMENDMENT.** Section 43-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-10. Regulation of use of terms titles.**

1. A person may not use the title or designation "architect", "registered architect", "licensed architect", any variation of those terms, or any other words, letters, or device to indicate that person is an architect authorized to practice architecture in this state unless that person is registered as an architect under this chapter. In a copartnership of architects, each member of the partnership shall hold a certificate of registration to practice.
2. A person may not use the title or designation "landscape architect", "registered landscape architect", "licensed landscape architect", any variation of those terms, or any other words, letters, or device to indicate that person is a landscape architect authorized to practice landscape architecture in this state unless that person is registered as a landscape architect under this chapter.
3. This chapter does not authorize a landscape architect to use the title "architect" or to practice architecture.

**SECTION 10. AMENDMENT.** Section 43-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-11. Application for examination - Fee.** Before an individual may take the examination for registration as an architect or a landscape architect, that individual shall make an application to the board submitting satisfactory evidence of having the required qualifications and shall pay an examination fee of not more than one hundred dollars. If an applicant fails to pass the examination, at the next regularly scheduled examination the applicant may take a partial or entire reexamination is required, the as determined appropriate by the board. An applicant shall pay a reexamination fee of not more than one hundred dollars for a reexamination. The fee for reexamination may be waived in whole or in part by the board.

**SECTION 11. AMENDMENT.** Section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-13. Qualifications.** An applicant for registration as an architect or landscape architect:

1. Must be at least eighteen years of age;
2. Must be of good moral character, with rejection possible on the basis of:
  - a. Conviction of an offense determined by the board to have a direct bearing upon an applicant's ability to serve the public as an architect or a landscape architect, or the board determines, following conviction of an offense, that the applicant is not sufficiently rehabilitated under section 12.1-33-02.1;
  - b. Misstatement or misrepresentation of fact by the applicant in connection with that individual's application; or
  - c. Violation of any of the standards of conduct required of registrants;
3. Must have successfully completed an examination for registration;
4. In the case of an architect, must ~~have the practical experience and academic training as is specified in the current guidelines published by the national council of architectural registration boards if such guidelines are adopted by the board~~ hold a professional degree in architecture from an accredited school of architecture and must have the required practical experience, as established by the board;
5. In the case of a landscape architect, must hold a professional degree in landscape architecture from an accredited school of landscape architecture and must have the required practical experience, as established by the board; and
- 5- 6. Must satisfy registration criteria adopted by the board.

**SECTION 12. AMENDMENT.** Section 43-03-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-14. Examination.**

1. ~~Before an applicant may be registered as an architect, the applicant shall pass satisfactorily an examination in such technical and professional courses as are established by the board. The examination must have special reference to the planning, design, and construction of buildings. The examination must cover such subjects and be graded on such basis as outlined by the national council of architectural registration boards.~~
2. Before an applicant may be registered as a landscape architect, the applicant shall pass satisfactorily an examination established by the board.
3. The board may administer an examination or may recognize a board-approved examination of a nationally recognized entity.

**SECTION 13. AMENDMENT.** Section 43-03-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-15. When examination not necessary.** ~~A The board may admit a nonresident applicant seeking to register to practice architecture or landscape architecture in North Dakota may be admitted to practice if:~~

1. ~~The applicant holds a license in the state where the applicant's office is located; and~~
2. ~~The applicant holds a national council of architectural registration boards certificate, when:~~
  - a. ~~The applicant files an application with the board, containing such information concerning the applicant as the board considers pertinent; and~~
  - b. ~~The board receives from the national council of architectural registration boards a certified copy of the applicant's council record, without requiring the applicant to pass an examination if the applicant is licensed to practice architecture or landscape architecture under the laws of any other state that has requirements substantially equal to those provided for under this chapter. An applicant under this section shall pay the fees provided for under section 43-03-18.~~

**SECTION 14. AMENDMENT.** Section 43-03-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-16. Certificates of registration issued by board - Result of examinations recorded by secretary of board - List of certificate holders.** ~~The result of every examination for registration as an architect or a landscape architect and the evidence of qualifications must be recorded by the secretary secretary-treasurer of the board. The board shall issue a certificate of registration to every individual who passes the examination or otherwise is entitled to receive the certificate. The secretary secretary-treasurer of the board shall maintain a list of architects and landscape architects certified under this section chapter. This list of certificate holders must contain the registrant's each certificate holder's name, current business address, certification number, and the expiration date of the certificate.~~

**SECTION 15. AMENDMENT.** Section 43-03-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-17. Certificates of registration - Term - Renewal.** ~~A An initial certificate of registration as an architect or a landscape architect must be issued for a term established by the board. Upon the payment of the proper fee, a certificate of registration may be renewed without examination expires on June thirtieth of the year following the date of issuance. A renewed certificate of registration is valid for two years.~~

**SECTION 16. AMENDMENT.** Section 43-03-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-18. Fees.**

1. The following fees apply to architects and landscape architects:

- a. Following examination, ~~an architect a~~ registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
  - b. When examination is not necessary under section 43-03-15, ~~an architect a~~ registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
  - c. ~~An architect A~~ registration renewal fee, which need not be collected annually, but which must be based on no more than ~~one~~ three hundred dollars per year, as set by the board.
  - d. ~~Following examination, a landscape architect registration fee of not more than five hundred dollars, as Fees set by the board under this subsection are not subject to chapter 28-32.~~
  - e. ~~A landscape architect registration renewal fee, which need not be collected annually, but which must be based on no more than five hundred dollars per year, as set by the board.~~
2. If in any year the board incurs expenses related to regulation of architects and landscape architects which are in excess of the income generated through ~~landscape architect~~ fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Landscape architect fees A certificate holder who fails to pay a special fee assessed by the board under this subsection is subject to the forfeiture provisions under section 43-03-19.
  3. Fees set by the board may not exceed the amount reasonably necessary to regulate the profession professions of architecture and landscape architecture.
  3. If in any year the board incurs expenses related to regulation of architects which are in excess of the income generated through architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of architecture.

**SECTION 17. AMENDMENT.** Section 43-03-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-19. Effect of failure to pay fee Renewal - Forfeiture.**

1. If ~~the A~~ holder of a certificate of registration as an architect or a landscape architect ~~fails shall apply to renew the certificate and~~ pay the associated renewal fee or a special fee when due, ~~that individual's certificate must be revoked unless that individual's application for renewal is made within one year after the expiration of that individual's certificate. If application for renewal is made within one year, that individual then shall pay the delinquent fee set by the board under section 43-03-18. If a former holder applies for renewal more than one year after the expiration of that individual's certificate, that individual may, in the board's discretion, be reinstated upon payment of a fee as set by the board. Application for renewal must be accompanied by~~

evidence satisfactory to the board of compliance with this chapter. Failure of a certificate holder to timely renew the certificate and pay the associated renewal fee before the expiration of the certificate results in forfeiture of the certificate.

2. A certificate may not be revoked for nonpayment of fees unless the secretary of the board has first given at least thirty days' notice by certified mail to the holder of such certificate. The notice must be directed to the last-known address or place of residence of the delinquent. At least two months before the date of the expiration of a certificate of registration, the secretary-treasurer shall notify the certificate holder of the upcoming expiration and at least two weeks before the expiration date the secretary-treasurer shall notify any outstanding certificate holders by certified mail, at the certificate holder's last-known address, of the upcoming expiration and resulting forfeiture.

**SECTION 18. AMENDMENT.** Section 43-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-20. Revocation, denial, or suspension of registration.** If the board revokes, denies, or suspends the certificate of registration or application of a certificate holder or applicant for certificate, the certificate holder or applicant has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. The board, after a hearing upon thirty days' written notice to the certificate holder, may revoke, deny, or suspend any certificate of registration of or application to be an architect or a landscape architect upon proof that:

1. Such ~~The certificate has been~~ was obtained or attempted to be obtained by fraud, deceit, or material misrepresentation of fact in applying for a certificate or renewal of a certificate or in passage of the examination under this chapter;
2. The holder of ~~such the~~ certificate has been guilty of malfeasance, deceit, fraud, gross incompetency, or negligence in connection with the holder's practice of architecture or landscape architecture;
3. The holder of the certificate has exhibited mental incompetency, untrustworthiness, incompetency, or misconduct in the practice of architecture or landscape architecture as evidenced by conduct that endangers life, health, property, or the public welfare.
4. The holder of ~~such the~~ certificate ~~has~~ allowed a nonregistered person to practice as an architect by the device of permitting the certificate holder's name or stamp to be placed upon drawings, or other contract documents, not prepared by the holder or under the holder's direct supervision;
5. The holder of the certificate or applicant had an architecture or a landscape architecture license of another state suspended or revoked or was otherwise disciplined by another state;

- 4- 6. The holder of such the certificate has been or applicant was convicted of an offense determined by the board to have a direct bearing upon the certificate holder's or applicant's ability to serve the public as an architect or landscape architect; or that, following conviction of an offense, the holder or applicant is not sufficiently rehabilitated under section 12.1-33-02.1; or
- 5- 7. The holder of such the certificate has or applicant violated this chapter or rules adopted under this chapter. If a certificate holder or applicant is convicted of a crime in another state which would constitute a violation of this chapter had the criminal action taken place in this state, a copy of the judgment of conviction certified by the rendering court is presumptive evidence of the conviction in any hearing under this section. For purposes of this subsection, a conviction includes a plea of nolo contendere or its equivalent.

**SECTION 19. AMENDMENT.** Section 43-03-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-22. Stamp.** At the time of the issuance of the certificate of registration, the board shall furnish to the applicant require the certificate holder to acquire, at the applicant's certificate holder's expense, a rubber stamp or indicia to be used by the applicant certificate holder in the conduct of the applicant's certificate holder's practice and to be impressed upon drawings, plans, and other documents prepared by the applicant certificate holder. The board shall prescribe adopt rules governing the use technical requirements of such stamp and indicia and applicant's the certificate holder's signature.

**SECTION 20. REPEAL.** Sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code are repealed.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 359****HOUSE BILL NO. 1024**

(Legislative Council)  
(Administrative Rules Committee)

AN ACT to amend and reenact sections 43-06-18, 43-06-19, 43-10-24, 43-18.1-09, 43-18.2-12, 43-23-17, 43-25-19, 43-33-18, 43-40-18, 43-41-14, 43-42-07, 43-45-08, and 43-48-16 of the North Dakota Century Code, relating to penalty provisions under occupational and professional licensing laws; to repeal section 43-41-13 of the North Dakota Century Code, relating to bribery and false statements in seeking licensure from the board of social work examiners; and to provide penalties.

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

**SECTION 1. AMENDMENT.** Section 43-06-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-18. State's attorney to enforce law.** The state's attorney of each county in this state shall enforce ~~the provisions of this chapter~~ section 43-06-19 and prosecute all violations thereof, and the secretary-treasurer of the board, under the direction of the board, shall aid in the enforcement of this chapter.

**SECTION 2. AMENDMENT.** Section 43-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-19. Penalty.** Any person who ~~violates any of the provisions of this chapter, and any person~~ fraudulently procures a license to practice chiropractic or who, without complying with the provisions of this chapter:

1. Practices or attempts to practice chiropractic;
2. Advertises as a chiropractor; or
3. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropractic,

is guilty of a class B misdemeanor.

**SECTION 3. AMENDMENT.** Section 43-10-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-24. Penalty.** Any person ~~willfully violating any of the provisions of sections 43-10-21 through 43-10-23, except rules and regulations promulgated under operating or managing a funeral establishment without a funeral establishment license in violation of section 43-10-22,~~ is guilty of a class B misdemeanor. ~~Any person who willfully violates a rule or regulation promulgated under section 43-10-22 is guilty of an infraction.~~

**SECTION 4. AMENDMENT.** Section 43-18.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-18.1-09. Violations - Penalty.** Any person ~~who willfully that violates any of the provisions of this chapter is guilty of an infraction the state plumbing code adopted under section 43-18-09, violates subsection 1 of section 43-18.1-04, or works under the license of another person in a manner that is in violation of subsection 3 of section 43-18.1-04 is guilty of a class B misdemeanor.~~

**SECTION 5. AMENDMENT.** Section 43-18.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-18.2-12. Violation - Penalty.** Any person ~~who willfully that violates this chapter is guilty of an infraction the state plumbing code adopted under section 43-18-09, violates section 43-18.2-03, or works under the license of another person in a manner that is in violation of section 43-18.2-06 is guilty of a class B misdemeanor.~~

**SECTION 6. AMENDMENT.** Section 43-23-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-17. Penalty.** Any person violating ~~any of the provisions of this chapter section 43-23-05 or 43-23-14.1 is guilty of an infraction.~~

**SECTION 7. AMENDMENT.** Section 43-25-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-19. Penalty for violation.** Any person violating ~~any of the provisions of this chapter section 43-25-03 without being exempt under section 43-25-04 is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.~~

**SECTION 8. AMENDMENT.** Section 43-33-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-18. Violations - Penalty - Injunction.** Any person who ~~violates any of the provisions of fits or dispenses hearing instruments without a license or trainee permit as provided in this chapter or who violates section 43-33-13 is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.~~

**SECTION 9. AMENDMENT.** Section 43-40-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-40-18. Penalty - Injunction.** Any person who violates section 43-40-02 ~~and subsection 4 of section 43-40-16 is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter.~~

**SECTION 10. AMENDMENT.** Section 43-41-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-14. Penalty.** Any person who violates ~~any provision of this chapter subsection 1 of section 43-41-04 is guilty of a class B misdemeanor.~~

**SECTION 11. AMENDMENT.** Section 43-42-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-07. Penalty.** Any person who ~~violates this chapter or any rules adopted under~~ practices polysomnography or respiratory care in violation of this chapter is guilty of an infraction.

**SECTION 12. AMENDMENT.** Section 43-45-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-08. Penalty.** Any person who violates ~~this chapter~~ subsection 1 of section 43-45-05.2 is guilty of a class B misdemeanor.

**SECTION 13. AMENDMENT.** Section 43-48-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-48-16. Penalty.** Any person who violates ~~any provisions of this chapter~~ section 43-48-02 is guilty of a class B misdemeanor.

**SECTION 14. REPEAL.** Section 43-41-13 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 360

### HOUSE BILL NO. 1116

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Funeral Service)

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to the powers of the state board of funeral service to conduct information seminars; and to amend and reenact subsection 6 of section 43-10-10.1 and sections 43-10-13, 43-10-14, 43-10-15, 43-10-15.1, 43-10-22, and 43-10-23 of the North Dakota Century Code, relating to an exception to the requirement of a license to practice funeral service, licensing of funeral practitioners, and licensing and inspection of funeral establishments.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Information seminars. The board may conduct information seminars.

**SECTION 2. AMENDMENT.** Subsection 6 of section 43-10-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6. This chapter does not prohibit individuals licensed in other states, as embalmers or funeral directors, from assisting a North Dakota licensed embalmer during disasters or special emergencies funeral practitioners.

**SECTION 3. AMENDMENT.** Section 43-10-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed.** The board shall grant a license to practice funeral service if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than ~~one~~ two hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable ~~and~~, nontransferable, and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business where it can be observed by the public.

**SECTION 4. AMENDMENT.** Section 43-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-14. License by reciprocity.** A licenseholder in good standing in another state maintaining a system and standard of examination equivalent to jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements of this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

**SECTION 5. AMENDMENT.** Section 43-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-15. License - Term - Renewal - Fee for renewal.** A license to practice funeral service is valid for ~~one year~~ until the end of the year issued and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed one hundred dollars. The board may refuse to renew a license for cause.

**SECTION 6. AMENDMENT.** Section 43-10-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-15.1. Late renewal.** A license that has been expired may be renewed at any time within ~~three~~ two years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee determined by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on the date on which the application is filed, on the date which the renewal fee is paid, or on the date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed within ~~three~~ two years after its expiration may ~~not~~ be renewed ~~thereafter~~ by filing an application for renewal on a form prescribed by the board, payment of the late fee, and passing the law and rules examination.

**SECTION 7. AMENDMENT.** Section 43-10-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-22. Licensure of funeral establishments.** A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. Except for on tribal land, a funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than one hundred ~~twenty-five~~ dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of an individual licensed to practice funeral service. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

**SECTION 8. AMENDMENT.** Section 43-10-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-23. Inspections - Hearings - Revocations - Appeal.** The funeral establishment, or that part of a funeral establishment in which is conducted or intended to be conducted any funeral service business, must be open at all times for inspection by the board or the state department of health. The board or agents employed by it and the state department of health may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary rules adopted by the board or any other rules or federal regulations pertaining to funeral service whenever either deems the inspection advisable. ~~If, upon inspection, it is found that such rules are not complied with, the board shall notify the holder of the funeral establishment license and hold a hearing.~~ The board may subpoena witnesses, administer oaths, and take testimony. All proceedings under this section must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke, suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the action of the board may appeal to the district court of the county in which the person resides or the district court of Burleigh County in accordance with chapter 28-32.

Approved April 30, 2009  
Filed May 4, 2009

**CHAPTER 361****SENATE BILL NO. 2094**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to exempting certain employees at the developmental center at westwood park, Grafton, from the requirements of the Nurse Practices Act.

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

**SECTION 1. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-04. Persons exempt from provisions of chapter.** This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. A person that performs nursing interventions in cases of emergency or disaster.
2. A student practicing nursing as a part of an in-state nursing education program.
3. A licensed nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. An individual who performs nursing tasks for a family member.
7. A person that renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person that provides medications, other than by the parenteral route:
  - a. Within a correctional facility, in compliance with section 12-44.1-29;
  - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;

- c. Within a treatment or care center for developmentally disabled persons licensed under chapter 25-16;
  - d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; ~~or~~
  - e. Within the developmental center at westwood park, Grafton, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services; or
  - f. Within a human service center licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
    - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
    - b. Who serves as a guest lecturer or short-term consultant; or
    - c. Who provides evaluation undertaken on behalf of an accrediting organization.
  11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.
  12. Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit.

Approved March 18, 2009  
Filed March 19, 2009

**CHAPTER 362****HOUSE BILL NO. 1269**

(Representatives Kreidt, Pollert, Weisz, Wieland)  
(Senators Fischer, J. Lee)

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; to amend and reenact section 43-12.1-14 of the North Dakota Century Code, relating to discipline of an unlicensed assistive person practicing without registration; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs, or controlled substances for personal use or unauthorized use;
7. Has practiced nursing or assisted in the practice of nursing in this state without a current license or registration or as otherwise prohibited by this chapter;

8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

**SECTION 2.** A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

**Unlicensed assistive person - Practice without a registration.** If the board determines an unlicensed assistive person, whose registration has expired, violated subsection 7 of section 43-12.1-14 by practicing without a current registration for a period of up to four months from the initial date of employment, the action of the board in the case of a first violation is limited to the issuance of a letter of concern.

**SECTION 3. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall study any steps necessary to enable the state department of health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a potential location for that registry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 363****SENATE BILL NO. 2227**

(Senators Stenehjem, O'Connell)  
(Representatives Boucher, Carlson)  
(At the request of the Governor)

AN ACT to amend and reenact subsections 5 and 6 of section 43-12.2-01 and subsection 3 of section 43-12.2-03 of the North Dakota Century Code, relating to the medical loan repayment program; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Subsections 5 and 6 of section 43-12.2-01 of the North Dakota Century Code are amended and reenacted as follows:

5. Each recipient is limited to a ~~ten~~ thirty thousand dollar maximum loan repayment to be paid over two years.
6. The state health council ~~shall~~ may select ~~up to five~~ any number of recipients ~~in five and~~ communities each year as participants in the program ~~subject to the availability of funding~~.

**SECTION 2. AMENDMENT.** Subsection 3 of section 43-12.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A nurse practitioner, physician assistant, or certified nurse midwife who receives loan repayment under this chapter:
  - a. Must be a graduate of an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives;
  - b. Must be enrolled in or have graduated from an accredited training program for nurse practitioners, physician assistants, or certified nurse midwives prior to or within one year after submitting an application to participate in the loan repayment program and may not have practiced full time as a nurse practitioner, physician assistant, or certified nurse midwife in this state ~~within three years~~ for more than one year before the date of the application;
  - c. Must be licensed or registered to practice as a nurse practitioner, physician assistant, or certified nurse midwife in this state;
  - d. Shall submit an application to participate in the loan repayment program; and
  - e. Must have entered into an agreement with a selected community to provide full-time services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

**SECTION 3. APPROPRIATION - COMMUNITY HEALTH TRUST FUND.**

There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$67,500, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funding for the medical loan repayment program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 364****SENATE BILL NO. 2164**

(Senators Flakoll, Andrist)

(Representatives Delmore, Karls, Nathe, Porter)

AN ACT to amend and reenact subsection 4 of section 43-13-01 and section 43-13-13.2 of the North Dakota Century Code, relating to optometrists dispensing therapeutic pharmaceutical agents.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-13-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term includes nonscheduled pharmaceutical agents, except for acetaminophen with thirty milligrams of codeine, that have documented use in the treatment of ocular-related disorders or diseases. As used in this subsection:
  - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.
  - b. "Therapeutic pharmaceutical agents" includes topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases. ~~The dispensing of therapeutic pharmaceutical agents is not permitted under this chapter.~~

**SECTION 2. AMENDMENT.** Section 43-13-13.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-13.2. Practice of optometry - Certification requirements - Notification.**

1. Any person engaged in visual training procedures or who employs or prescribes lenses, prisms, filters, ophthalmic instruments, or combinations thereof, held either in contact with the eye, or in frames or mounting, to aid, relieve, or correct any visual or ocular anomaly, or holds out as being able to do so, is deemed to be engaged in the practice of optometry.
2. Before any optometrist may prescribe and administer pharmaceutical agents in the treatment and management of ocular diseases, the optometrist must first be certified or qualify for certification in the use of diagnostic pharmaceutical agents. For additional certification to

prescribe and administer pharmaceutical agents in the treatment and management of ocular disease, the board shall require at least seventy-six hours of didactic instruction and twenty-four hours of clinical application of pharmaceutical agents for the treatment and management of ocular diseases. The course for therapeutic certification must be provided by an institution accredited by a regional or professional accrediting organization that is recognized and approved by the United States department of education or the council on postsecondary accreditation.

3. An optometrist may not dispense therapeutic pharmaceutical agents, except an optometrist may:
  - a. Provide a patient a drug sample at no cost to the patient; or
  - b. Sell contact lenses or ophthalmic devices that are classified by the federal food and drug administration as a drug.
4. The board shall provide the board of pharmacy upon request a list of licensed optometrists certified in the use of pharmaceutical agents.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 365****SENATE BILL NO. 2039**

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact sections 43-15-03, 43-15-12, 43-15-25, and 43-15-26 of the North Dakota Century Code, relating to the board of pharmacy, the North Dakota pharmaceutical association, and pharmacist license fees; and to repeal sections 43-15-13.1, 43-15-13.2, 43-15-13.3, 43-15-13.4, 43-15-13.5, 43-15-13.6, and 43-15-30 of the North Dakota Century Code, relating to membership in the North Dakota pharmaceutical association.

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

**SECTION 1. AMENDMENT.** Section 43-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-03. Board of pharmacy - Appointment - Qualifications.** The state board of pharmacy ~~shall consist~~ consists of ~~five~~ seven members appointed by the governor ~~upon the recommendation of the North Dakota pharmaceutical association.~~ The persons appointed Five members of the board must be licensed pharmacists and members of such association, one member must be a registered pharmacy technician, and one member must represent the public and may not be affiliated with any group or profession that provides or regulates any type of health care.

**SECTION 2. AMENDMENT.** Section 43-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-12. State board of pharmacy - Report.** The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. ~~The board shall submit an annual report to the North Dakota pharmaceutical association rendering an account of all moneys received and disbursed by it.~~

**SECTION 3. AMENDMENT.** Section 43-15-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-25. Term of license - Renewal - Fee - Where displayed.** The license issued by the board to a pharmacist under ~~the provisions~~ of this chapter, and the registration thereof, ~~shall entitle~~ entitles the holder to act in the capacity therein stated for one year unless duly canceled, suspended, or revoked. Every licensee who desires to retain a license, on or before the first day of March in each year, shall pay to the secretary of the board a renewal fee in an amount to be fixed by the board not to exceed ~~two~~ one hundred dollars. Upon payment of the fee, ~~the board shall issue~~ a renewal license ~~must be issued.~~ The license and renewal must be displayed in a conspicuous place in the pharmacy and drugstore where the holder is employed. After a licensee has held licenses duly issued over a period of fifty consecutive years, the secretary of the board may issue the licensee a lifetime license ~~which will entitle~~ that entitles the licensee to act in the capacity of pharmacist thereafter without further payment unless ~~such~~ the license is canceled, revoked, or suspended.

**SECTION 4. AMENDMENT.** Section 43-15-26 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-26. Failure to renew license - Renewal fee - Cancellation of license - Reinstatement.** If a licensed pharmacist in this state fails to pay the fee for a renewal of a license within the time required, the secretary of the board shall mail the pharmacist a notice, addressed to the pharmacist's last-known place of residence, notifying the pharmacist of failure to obtain a renewal license. The delinquent licenseholder, within sixty days after the notice is mailed, may procure a renewal license upon the payment of a renewal fee to be set by the board not to exceed ~~two~~ one hundred dollars. If the licenseholder fails to have a license renewed within sixty days after the notice is mailed, the original or renewal license, as the case may be, ~~shall become~~ becomes void and the registry thereof ~~shall~~ must be canceled. The board, on application of the delinquent licenseholder and upon the payment of all unpaid fees, may authorize the issuance of a new license without examination, if it is satisfied that the applicant is a proper ~~person~~ individual to receive the same.

**SECTION 5. REPEAL.** Sections 43-15-13.1, 43-15-13.2, 43-15-13.3, 43-15-13.4, 43-15-13.5, 43-15-13.6, and 43-15-30 of the North Dakota Century Code are repealed.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 366****HOUSE BILL NO. 1091**

(Human Services Committee)

(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 43-15-25.1 and 43-15-31.3 of the North Dakota Century Code, relating to continuing education for pharmacists.

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

**SECTION 1. AMENDMENT.** Section 43-15-25.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-25.1. Continuing pharmaceutical education.**

1. The legislative assembly makes the following findings and declarations: Each pharmacist shall complete at least fifteen hours of approved continuing pharmaceutical education every year as a condition of renewal of a certificate of licensure as a pharmacist in this state.
  - a. Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain professional competency and improve professional skills.
  - b. To assure the continued competency of the pharmacist and to maintain uniform qualifications for licensure in the profession for the protection of the health and welfare of its citizens, the legislative assembly of North Dakota deems it in the public interest to adopt a continuous professional education program.
2. Commencing March 1, 1987, no ~~An~~ annual renewal of a license may not be issued to a pharmacist until ~~such~~ the pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous ~~two years~~ year to help assure the pharmacist's continued competence to engage in the practice of pharmacy. The board from time to time shall determine the amount of continuing education to be required, not to exceed ~~thirty~~ fifteen hours in each ~~biennium~~ annual period. Upon request of the board, proof of compliance shall be furnished to the board.
3. The board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, methods of determining compliancy, any fees, and such other rules consistent with this section as the board shall determine. This section and all rules adopted hereunder shall be uniformly applied by the board.

**SECTION 2. AMENDMENT.** Section 43-15-31.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-31.3. Oral transmission of prescriptions.** An oral transmission of a prescription drug may be accepted and dispensed by a pharmacist or licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the prescription, or a registered dental hygienist or a registered dental assistant who is authorized by the supervising dentist to orally transmit the prescription. The practitioner shall document the order for oral transmission in the patient's records. Only a licensed pharmacist or a licensed pharmacist intern or a registered pharmacy technician may receive an orally transmitted new or refill prescription.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 367****SENATE BILL NO. 2180**

(Senators Warner, J. Lee)

(Representatives Glassheim, N. Johnson)

AN ACT to amend and reenact section 43-17-02.1 of the North Dakota Century Code, relating to limitation on prescribing drugs by physician assistants.

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

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

**43-17-02.1. Physician assistant - Limitations on prescribing drugs.** A physician assistant may prescribe medications as delegated to do so by a supervising physician. This may include schedule ~~III~~ II through V controlled substances; ~~however, a physician assistant may not prescribe schedule II controlled substances.~~ A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 368****SENATE BILL NO. 2268**

(Senators Nodland, Wanzek)  
(Representatives Kasper, N. Johnson)

AN ACT to create and enact a new section to chapter 43-19.1 of the North Dakota Century Code, relating to recognition of retired status for engineers; to amend and reenact sections 43-19.1-02, 43-19.1-03, 43-19.1-04, 43-19.1-05, 43-19.1-07, 43-19.1-08, 43-19.1-09, 43-19.1-10, 43-19.1-11, 43-19.1-12, 43-19.1-12.1, 43-19.1-13, 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-16.1, 43-19.1-17, 43-19.1-18, 43-19.1-19, 43-19.1-20, 43-19.1-21, 43-19.1-22, 43-19.1-23, 43-19.1-24, 43-19.1-25, 43-19.1-26, 43-19.1-27, 43-19.1-29, 43-19.1-30, 43-19.1-31, and 43-19.1-33 of the North Dakota Century Code, relating to the regulation of professional engineers and professional land surveyors; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-02. Definitions.** In this chapter unless the context or subject matter otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors ~~hereinafter provided by this chapter.~~
2. "Engineer" means a professional engineer; ~~as defined in subsection 8.~~
3. "~~Engineer-in-training~~ Engineer intern" means ~~a person an individual~~ who complies with the requirements for education, experience, and character; and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. "Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of land within this state.
5. "Land surveyor" means ~~any person~~ an individual engaged in the practice of land surveying.
6. "~~Land surveyor-in-training~~ surveyor intern" means ~~a person an individual~~ who complies with the requirements for education, experience, and character; and who has passed an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.

7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering; ~~within the meaning and intent of this chapter, who if the person practices any branch of the profession of engineering; or who if the person,~~ by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer; ~~or and is able to practice engineering in this state if the person~~ through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or ~~who if the person~~ holds out as able to perform, or ~~who~~ does perform any engineering service or work or any other service ~~which that~~ is recognized as engineering, for a valuable consideration for others, including the public at large; ~~but. The practice of engineering does not mean or include the practice of engineering by persons a person~~ exempt under the provisions of section 43-19.1-29, nor the work ordinarily performed by ~~persons who operate a person that operates or maintain maintains~~ machinery or equipment. Notwithstanding the foregoing provisions, a person may not be construed to practice engineering unless that person offers engineering services to, or performs such engineering for, the public.
8. "Professional engineer" means ~~a person~~ an individual who, by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been ~~duly~~ registered and licensed by the state board of registration for professional engineers and land surveyors.
9. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.
10. "Responsible charge" means direct control and personal supervision of engineering or surveying work.
- ~~40.~~ 11. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.
- ~~44.~~ 12. "The practice or offer to practice surveying" includes the engagement of any person in land surveying or the representation by any person by verbal claim, sign, letterhead, card, or in any other manner, that such

person is a land surveyor and is able to perform land surveying in this state.

**SECTION 2. AMENDMENT.** Section 43-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-03. Board - Appointments - Terms.** A state board of registration for professional engineers and land surveyors is hereby created ~~whose~~ the duty of ~~which~~ is to administer the provisions of this chapter. The board consists of one professional land surveyor and four professional engineers ~~who.~~ The board members who are professional engineers must be appointed by the governor from among a list of nominees submitted to the governor by the North Dakota society of professional engineers who must have the qualifications required by section 43-19.1-04, such list ~~to contain~~ must include the names of at least three times the number of nominees as there are vacancies for each vacancy to be filled and one professional land surveyor. The governor shall appoint the professional land surveyor member of the board from a list of nominees submitted by the North Dakota society of professional land surveyors. The list must include the names of at least three nominees for the vacancy to be filled. The members must possess the qualifications required by section 43-19.1-04. The members of the board must be appointed for five-year terms ~~which~~ that are staggered so the term of one member expires June thirtieth of each year. ~~The first professional land surveyor on the board must be appointed for a five-year term beginning July 1, 1984.~~ Existing board members shall serve until their term expires. Each member of the board shall receive a certificate of appointment from the governor and shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of any member, the governor shall appoint for a term of five years a board member having the qualifications required in section 43-19.1-04 to take the place of the member whose term on the board is about to expire. A member may be reappointed. Each member shall hold office until the expiration of the term for which appointed or until a successor has been duly appointed and has qualified.

**SECTION 3. AMENDMENT.** Section 43-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-04. Board - Qualifications.** Each ~~of the~~ professional engineer board ~~members~~ member must be a professional engineer; who is a citizen and resident of this state, has been registered in this state a minimum of eight years, has been engaged in the lawful practice of engineering for at least twelve years, and ~~who~~ has had responsible charge of important engineering work for at least five years ~~and~~ the. Each professional land surveyor board member must be a registered professional land surveyor; who is a citizen and resident of this state ~~who,~~ has been registered as a professional land surveyor in this state a minimum of eight years, ~~and~~ has been responsible for important land surveying work for at least five years.

**SECTION 4. AMENDMENT.** Section 43-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-05. Board - Compensation and expenses.** Each member of the board ~~shall~~ is entitled to receive the sum of twenty-five dollars per diem, in an amount established by the board which may not exceed one hundred thirty-five dollars, when attending to the work of the board or any of ~~its~~ the board's committees and for the time spent in necessary travel; and; ~~in addition thereto, must~~ is entitled to be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

**SECTION 5. AMENDMENT.** Section 43-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-07. Board - Organization and meetings.** The board shall hold at least two regular meetings each year. ~~Special meetings may be held as the bylaws of the board provide.~~ The board shall elect or appoint annually the following officers: a chairman, a vice chairman, and a secretary. A quorum of the board consists of not less fewer than three members.

**SECTION 6. AMENDMENT.** Section 43-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-08. Board - Powers.** The board ~~has the following powers~~ may:

1. ~~To adopt~~ Adopt and amend all bylaws, rules of procedure, and regulations to administer and carry out the provisions of this chapter and for the conduct of ~~its~~ the board's affairs and functions ~~not inconsistent with the constitution and laws of this state or this chapter,~~ which may be reasonably necessary for the proper performance of ~~its~~ the board's duties and the regulation of ~~its~~ the board's proceedings, meetings, records, and examinations; and the conduct thereof, and to adopt ~~and promulgate~~ a code of ethics ~~which shall~~ that must be binding upon all persons registered under or subject to this chapter.
2. ~~To adopt~~ Adopt and have an official seal, which must be affixed to each certificate issued.
3. ~~To employ~~ Employ such clerks, technical experts, and attorneys as ~~it may deem~~ the board determines necessary or desirable to carry out ~~the provisions of~~ this chapter.
4. ~~To hold~~ Hold hearings, administer oaths, and take and record testimony, ~~and~~; under the hand of ~~its~~ the board's chairman and the seal of the board, subpoena witnesses and compel ~~their~~ the witnesses' attendance; ~~and to~~ require the submission of books, papers, documents, or other pertinent data in any disciplinary matters, or in any case when a violation of this chapter or of the rules or regulations ~~promulgated~~ adopted by the board is alleged; and ~~to~~ make findings, orders, and determinations ~~which that~~ which that have the force and effect of law; which are subject to review by the courts of this state in the manner provided by chapter 28-32. Upon failure or refusal of any person to comply with any such order of the board; or to honor ~~its~~ the board's subpoena, the board may apply to a court of any jurisdiction to enforce compliance with ~~same~~ the order or subpoena.
5. ~~To apply~~ Apply in the name of the state for relief by injunction, without bond, to enforce the provisions of this chapter; or to restrain any violation ~~thereof of this chapter.~~ In such proceedings, it is not necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the board are not personally liable under this proceeding.

**SECTION 7. AMENDMENT.** Section 43-19.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-09. Receipts and disbursements.** The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter, and shall deposit and disburse the ~~same money derived under this chapter~~ in accordance with section 54-44-12. The secretary shall give a surety bond to the state in such sum as may be required by the board. The premium on ~~said~~ the bond ~~must be regarded as~~ is a proper and necessary expense of the board. The secretary shall receive such salary as the board shall determine. The board shall employ ~~such~~ clerical or other assistants as are necessary for the proper performance of ~~its~~ the board's work, and shall make expenditures of this fund for any purpose ~~which, in the opinion of the board, determines~~ is reasonably necessary for the proper performance of ~~its~~ the board's duties under this chapter, including ~~but not limited to,~~ the expenses of the board's delegates to meetings of, and membership fees to, the national council of ~~state boards of engineering~~ examiners for engineering and surveying and any of ~~its~~ the organization's subdivisions. Under no circumstances may the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.

**SECTION 8. AMENDMENT.** Section 43-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-10. Records and reports.** The board shall:

1. Keep a record of ~~its~~ the board's proceedings and of all applications for registration, ~~which.~~ The record must show the name, age, and last-known address of each applicant; the date of application, the place of business of such applicant, the applicant's education, experience, and other qualifications; type of examination required; whether or not the applicant was rejected; whether or not a certificate of registration was granted; the date of the action of the board; and such other information as may be deemed necessary by the board; which. The record of the board is prima facie evidence of the proceeding of the board and a transcript thereof, duly of board proceedings which is certified by the secretary under seal, is admissible as evidence with the same force and effect as if the original were produced.
2. Annually, ~~as of January first in compliance with state law,~~ submit ~~to the governor~~ a report of ~~its~~ the board's transactions of the preceding year, ~~and shall transmit to the governor a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.~~

**SECTION 9. AMENDMENT.** Section 43-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-11. Roster.** A complete roster showing the names and last-known addresses of all ~~registered~~ professional engineers and ~~registered~~ land surveyors must be ~~published~~ made available by the secretary of the board at intervals as established by board regulations. Copies of this roster must be ~~mailed~~ made available to each person so registered, placed on file with the secretary of state registrant and all county auditors and city auditors and may be distributed or sold to the public.

**SECTION 10. AMENDMENT.** Section 43-19.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-12. General requirements for registration.** To be eligible for registration as a professional engineer or land surveyor, or for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training surveyor intern~~, an applicant must be of good character and reputation and shall submit a written application to the board containing such information as the board may require together with five references, three of which references must be ~~registered professional~~ registered professional engineers in the case of engineers, or three of which references must be ~~registered professional~~ registered professional land surveyors in the case of land surveyors, having personal knowledge of the applicant's engineering or land surveying experience, or in the case of an application for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training surveyor intern~~, by three character references.

**SECTION 11. AMENDMENT.** Section 43-19.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-12.1. Conviction not bar to registration - Exceptions.** Conviction of an offense does not disqualify a ~~person~~ an individual from registration under this chapter unless the board determines that the offense has a direct bearing upon a ~~person's~~ an individual's ability to serve the public as an engineer and or land surveyor, or that, following conviction of any offense, the ~~person~~ individual is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 12. AMENDMENT.** Section 43-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-13. Registration without examination - Professional engineers.** An applicant otherwise qualified must be admitted to registration as a professional engineer without examination if the applicant is:

1. A ~~person~~ An individual holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to that ~~person~~ applicant by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country and who, in the opinion of the board, based upon verified evidence, meets the requirements of this chapter; or
2. A ~~person~~ individual holding a certificate of qualification issued by the national bureau of engineering registration, who in the opinion of the board meets the requirements of this chapter; or
3. ~~Any person~~ An individual registered as a professional engineer by the state of North Dakota under ~~the provisions~~ of chapter 43-19, on the thirtieth day of June 1967.

**SECTION 13. AMENDMENT.** Section 43-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-14. Registration with examination - Professional engineers.** An applicant otherwise qualified must be admitted to registration as a professional engineer, if the applicant has successfully passed a written examination of ~~not less than~~ at least eight hours in the principles and practice of engineering, as prescribed by the board, and has one of the following additional qualifications:

1. Is a graduate of an engineering curriculum of four years or more an engineer intern with a baccalaureate degree in engineering from an institution offering accredited programs approved by the board as being

of satisfactory standing, ~~and with who has~~ a specific record of an additional four years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering; ~~and who holds a valid engineer-in-training certificate.~~

2. Is a ~~person who has satisfactorily completed a four-year engineering curriculum not an engineer intern with a baccalaureate degree in engineering from a program that is not accredited but is approved by the board, and who has eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering; and who holds a valid engineer-in-training certificate.~~
3. Is a ~~person~~ an engineer intern with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character ~~which that~~ indicates to the board that the applicant is competent to practice engineering, and who holds a valid ~~engineer-in-training~~ engineer intern certificate as of July 1, 2004.
4. Is a ~~person with experience of not less than four years as an engineer intern who meets one of the educational requirements listed in subsection 1, 2, or 5, who has been a teacher of engineering in a college or university offering an approved engineering curriculum of four years or more, and who has had a minimum of two years of practical nonteaching engineering experience which that is of a character and grade which that indicates to the board that the applicant is competent to practice engineering.~~
5. Is a ~~person who has satisfactorily completed a four-year or more an~~ engineer intern with a baccalaureate degree in an engineering-related curriculum and program, who has at least twelve years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering and holds a valid engineer-in-training certificate.

**SECTION 14. AMENDMENT.** Section 43-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-15. Additional qualifications of ~~engineers-in-training~~ engineer interns.** Except in the case of a ~~person~~ an individual who has filed an application ~~prior to~~ before July 1, 1967, and any subsequent reapplication by such ~~person~~ individual, an applicant otherwise qualified must be admitted to certification as an ~~engineer-in-training which certification is valid for a period of twelve years, if the applicant is a person~~ engineer intern. An engineer intern is an individual who ~~is~~ has:

1. A ~~graduate of an approved engineering curriculum of four years or more baccalaureate degree in engineering from an institution that offers accredited programs approved by the board and has passed the board's written examination of not less than at least eight hours in the fundamentals of engineering shall be certified or enrolled as an~~ engineer-in-training engineer intern.

2. ~~An applicant who has satisfactorily completed a four year engineering curriculum other than the ones~~ A baccalaureate degree in engineering from a program that is not accredited but is approved by the board ~~and,~~ who has a specific record of at least four or more ~~or more~~ years of experience in engineering work of a grade and character satisfactory to the board, and who passes the board's written examination of not less than at least ~~not less than~~ at least eight hours in the fundamentals of engineering.
3. ~~An applicant who has satisfactorily completed a four year~~ A baccalaureate degree in an engineering-related curriculum and program, who has a specific record of at least six or more ~~or more~~ years of experience in engineering work of a grade and character satisfactory to the board, and who passes the board's written examination of not less than at least ~~not less than~~ at least eight hours in the fundamentals of engineering.

**SECTION 15. AMENDMENT.** Section 43-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-16. Registration - Land Professional land surveyor.** Any person individual who shows, to the satisfaction of the board, that the person individual is otherwise qualified and is over the age of eighteen years is eligible for registration as a professional land surveyor, if the person is individual:

1. A person holding ~~Holds~~ a certificate of registration to engage in the practice of land surveying issued on the basis of a minimum sixteen-hour written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown by the person's individual's application; which, in the opinion of the board, are equal to or higher than the requirements of this chapter;
2. A graduate from an accredited engineering or surveying curriculum of four years or more, ~~Has a baccalaureate degree in engineering or surveying from an institution that offers accredited programs approved by the board, followed by at least four years of land surveying experience; of a character satisfactory to the board; and,~~ who has passed a written examination of not less than at least ~~not less than~~ at least sixteen hours designed to show that the person individual is qualified to practice land surveying;
3. A person having ~~Has at least~~ eight years ~~or more~~ of active experience in land surveying; of a character satisfactory to the board, and who has passed a written examination of not less than at least ~~not less than~~ at least sixteen hours designed to show that the person individual is qualified to practice land surveying; or
4. A person ~~is~~ registered as a land surveyor by the state of North Dakota, under the provisions of former chapter 43-24, on the thirtieth day of June 1967.

**SECTION 16. AMENDMENT.** Section 43-19.1-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-16.1. Qualifications of land ~~surveyors-in-training~~ surveyor interns.** An applicant for certification as a land ~~surveyor-in-training~~ surveyor intern who has ~~had a minimum of~~ at least four years of qualifying land surveying

experience of a character satisfactory to the board, of which a formal education in an accredited engineering or land surveying curriculum may constitute a part thereof, may receive from the board, upon passing a written examination on the fundamentals of mathematics and the basic principles of land surveying, a certificate stating that the applicant has passed the examination and been recorded as a land surveyor-in-training surveyor intern.

**SECTION 17. AMENDMENT.** Section 43-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-17. Application for registration.** Application for registration as a professional engineer or land surveyor, ~~and or~~ for certification as an ~~engineer-in-training engineer intern~~ or land ~~surveyor-in-training, surveyor intern~~ must be on a form prescribed and furnished by the board containing statements made under oath, showing the applicant's education ~~and~~, a detailed summary of the applicant's technical experience, and references as required by this chapter and must be accompanied by registration fees.

**SECTION 18. AMENDMENT.** Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-18. Registration fees.** The board shall establish registration fees for professional engineers, ~~engineers-in-training~~, land surveyors, ~~engineer interns~~, and land ~~surveyors-in-training surveyor interns~~ in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter. The registration fees may not exceed the amount of one hundred dollars for a one-year period or two hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

**SECTION 19. AMENDMENT.** Section 43-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-19. Examinations.** Written examinations must be held at such times and places as the board shall determine. Examinations required on fundamental engineering or land surveying subjects may be taken at any time prescribed by the board. The final examinations may not be taken until the applicant has completed a period of engineering or land surveying experience as provided in this chapter. The board shall establish the minimum passing grade on any examination may not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board ~~in an amount not in excess of the regularly established registration fee.~~ Any candidate for registration having an average grade of ~~less than fifty percent that does not meet the standards set by the board~~ may not apply for reexamination for one year from the date of such examination.

**SECTION 20. AMENDMENT.** Section 43-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-20. Certificates.** The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who, in the opinion of the board, has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as ~~engineers-in-training and engineer interns~~ or land ~~surveyors-in-training surveyor interns~~. Certificates of registration must carry the designation "professional engineer" or "professional land surveyor", must show the full name of the registrant without any titles, must be numbered, and must be signed by the chairman and the secretary under seal of the

board. The issuance of a certificate of registration by the board is prima facie evidence ~~that the person~~ individual named on the certificate is entitled to all rights and privileges of a professional engineer or land surveyor during the term of which the certificate providing the same has not been revoked or suspended.

**SECTION 21. AMENDMENT.** Section 43-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-21. Seals.** Each registrant ~~hereunder may~~ under this chapter upon registration may obtain a seal of the design authorized by the board, bearing the registrant's name, ~~serial~~ registration number, and the legend; "registered professional engineer" or "registered professional land surveyor". Final engineering drawings, specifications, maps, plats, reports, or other documents prepared by a person required to be registered under this chapter must, when issued presented to a client, contractor, subconsultant, or any public agency, must be signed, dated, and stamped with the said seal or facsimile thereof of the seal. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawings, specifications, maps, plats, reports, or other documents after the expiration or revocation or during the suspension of a certificate, or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

**SECTION 22. AMENDMENT.** Section 43-19.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-22. Expirations and renewals.** ~~Certificates~~ A certificate of registration ~~expire~~ expires on December thirty-first of the year of ~~their~~ issuance if registration is on an annual basis and of the year after ~~their~~ issuance if issued on a biennial basis; and ~~become~~ becomes invalid after that date unless renewed. The secretary of the board shall notify every ~~person registered~~ registrant under this chapter of the date of the expiration of ~~that person's~~ the registrant's certificate of registration and the amount of fee required for its renewal. The notice must be mailed to the registrant at the registrant's last-known address at least one month in advance of the expiration of the registrant's certificate. Renewal may be effected at any time before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules adopted by the board regarding requirements for reexamination and penalty fees.

**SECTION 23. AMENDMENT.** Section 43-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-23. Reissuance of certificates.** A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board. A ~~The board may establish~~ a reasonable charge must be made for such issuance.

**SECTION 24. AMENDMENT.** Section 43-19.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-24. Code of ethics.** The board shall cause to have prepared and shall adopt a code of ethics, a copy of which must be ~~delivered~~ made available to every registrant and applicant for registration under this chapter, and which must be published in the roster provided ~~for herein~~ under this chapter. Such publication

constitutes due notice to all registrants. The board may revise and amend this code of ethics from time to time, and shall ~~forthwith~~ notify each registrant in writing of such revisions or amendments. ~~Such~~ The code of ethics ~~when adopted~~ applies to all certificate holders, including specialists in a particular branch of the engineering or surveying profession.

**SECTION 25. AMENDMENT.** Section 43-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-25. Disciplinary action - Revocations, suspensions, or reprimand.** The board ~~has the power to~~ may suspend, refuse to renew, or revoke the certificate of registration of, ~~or and may~~ reprimand, any registrant. In an order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a registrant, the board may direct a registrant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and ~~its~~ the board's investigative panels in the investigation and prosecution of the case. Notwithstanding section 28-32-50, if a registrant is the prevailing party in an administrative appeal of a disciplinary action taken by the board under this section, the board shall pay the registrant's reasonable and actual costs, including reasonable attorney's fees. These powers apply to any registrant who is found guilty of any of the following:

1. The practice of any fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of engineering or land surveying.
3. Any offense determined by the board to have a direct bearing upon a ~~person's~~ an individual's ability to serve the public as a professional engineer and land surveyor; or when the board determines, following conviction of any offense, that a ~~person~~ an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The violation of the code of ethics adopted ~~and promulgated~~ by the board.

**SECTION 26. AMENDMENT.** Section 43-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-26. Disciplinary action - Procedure.** Any person may ~~prefer~~ file charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing and must be sworn to by ~~the each person or persons~~ making ~~them~~ the charges and must be filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within ~~three~~ six months ~~after the date on which they have been preferred~~ following the filing of charges unless the accused registrant waives this requirement. The time and place for ~~said~~ the hearing must be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, must be served upon the accused registrant either personally or sent by registered ~~or certified~~ mail to the last-known address of ~~such individual~~ the registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant has the right to appear in person or by counsel, or both; to cross-examine witnesses appearing against the accused; and to produce evidence and witnesses in defense of the accused. If the accused ~~person~~ fails or refuses to appear, the board may proceed to hear and determine the validity of the

charges. ~~If after such hearing~~ Following the hearing, the board members who did not serve on the investigative panel shall deliberate in executive session and if a majority of the board members who did not serve on the investigative panel vote in favor of sustaining the charges, the board shall make findings of fact, ~~draw its~~ and conclusions of law and shall issue ~~its~~ the board's order ~~therein~~, and serve the ~~same~~ findings, conclusions, and order upon the accused. In ~~said~~ the order the board may reprimand, suspend, refuse to renew, or revoke the accused ~~individual's~~ registrant's certificate of registration. Any ~~person~~ registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that ~~person's~~ registrant's certificate of registration; may appeal ~~therefrom~~ the board's action to the district court under the procedures provided by chapter 28-32.

**SECTION 27. AMENDMENT.** Section 43-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-27. Right to practice.**

1. ~~No person shall~~ A person may not practice or offer to practice professional engineering or land surveying, as defined by this chapter, unless ~~such~~ the person is duly an individual registered to practice under or exempt from the provisions of this chapter.
2. The following are not considered offering to practice engineering or surveying in the solicitation of work if the engineer or surveyor is licensed in another jurisdiction:
  - a. Advertising in a publication or electronic media if there is no holding out of professional services in jurisdictions in which not licensed.
  - b. Responding to a letter of inquiry regarding a request for proposals if there is written disclosure the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
  - c. Responding to a letter of inquiry from a prospective client if there is written disclosure that the engineer, surveyor, or firm is not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest.
  - d. Using the title or designation "professional engineer", "licensed engineer", "P.E.", "professional surveyor", "licensed surveyor", "P.L.S.", or similar title or designation in correspondence or on business cards from an office in the jurisdiction in which licensure is held.
3. Notwithstanding subsection 2, a proposal may not be submitted, a contract may not be signed, or work may not be commenced until an engineer, surveyor, or firm becomes licensed as provided under this chapter.
4. A registered professional engineer or registered land surveyor may practice or offer to practice professional engineering or land surveying by registered professional engineers or registered land surveyors, organized as a partnership, incorporated as a professional corporation under the provisions of the professional corporations law of this state, or

organized as a limited liability company under the professional limited liability company law of this state; or under the provisions of a similar law of any other state; is hereby authorized; provided all of the partners of such partnership; each officer and shareholder in the case of a professional corporation; or each manager and member in the case of a professional limited liability company are duly as an organization or as an individual operating under a trade name if the organization is registered under or exempt from the provisions of this chapter.

- 3- 5. In addition to and without impairing any rights or exemptions granted others in this chapter, the practice of or offer to practice professional engineering or land surveying as defined in this chapter, by individual engineers or land surveyors registered under this chapter either through or as an officer, employee, or agent of a partnership or corporation; or by a partnership or a corporation or limited liability company; other than a professional corporation or professional limited liability company, through individual engineers or land surveyors registered under this chapter; by an organization or by an individual operating under a trade name is permitted in this state provided if:
- a. All officers, ~~managers,~~ employees, and agents of such a ~~partnership, corporation, or limited liability company~~ an organization or the individual operating under a trade name who will perform the practice of engineering or of land surveying within this state for such ~~partnership, corporation, or limited liability company~~ are registered under this chapter;
  - b. Each person in responsible charge of the activities of any ~~such partnership, corporation, or limited liability company,~~ organization or individual operating under a trade name which activities constitute the practice of professional engineering and land surveying, is a professional engineer or land surveyor registered in this state or a ~~person~~ an individual authorized to practice professional engineering or land surveying as provided in this chapter;
  - c. Such ~~partnership, corporation, or limited liability company~~ organization or individual operating under a trade name has been issued a certificate of ~~authorization~~ commercial practice by the board as provided by subsection 4 ~~6;~~
  - d. Each ~~such partnership, corporation, or limited liability company~~ shall be organization or individual operating under a trade name is jointly and severally responsible with and for the conduct or acts of its agents, employees, officers, or managers in respect to any professional engineering or land surveying services performed or to be executed in this state. ~~No~~ An individual practicing professional engineering or land surveying ~~shall may not~~ be relieved of the responsibility for the individual's conduct or acts performed by reason of the individual's employment by or relationship with such ~~partnership, corporation, or limited liability company~~ organization or individual operating under a trade name; and
  - e. All final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the

practice of professional engineering or land surveyors as defined in this chapter surveying, when issued presented to a client, contractor, subconsultant, or any public agency, shall must be dated and bear the seals and signatures of the professional engineers or land surveyors registered under this chapter by whom or under whose responsible charge they were prepared. A working drawing or unfinished document must contain a statement to the effect the drawing or document is preliminary and not for construction, recording purposes, or implementation. It is unlawful for a registrant to affix or permit the registrant's seal and signature or facsimiles thereof to be affixed to any engineering drawing, specification, map, plat, report, or other document after the expiration or revocation or during the suspension of a certificate or for the purpose of aiding and abetting any other person to evade or attempt to evade any provision of this chapter.

- 4- 6. A partnership, corporation, or limited liability company An organization or individual operating under a trade name desiring a certificate of authorization commercial practice or the renewal thereof shall file a written application with the board setting forth the names and addresses of all partners, officers, directors, managers, or governors, if any, of such partnership, officers and directors of such corporation, or managers and governors of such limited liability company, organization and the names and addresses of all employees who are duly registered to practice professional engineering or land surveying in this state, and who are or will be in responsible charge of any engineering or land surveying in this state by such partnership, corporation, or limited liability company organization or individual operating under a trade name, together with other information as the board may require. Upon the receipt of an application, and of a fee in an amount established by the board for the initial certificate or annual renewal thereof, but not to exceed the amount of one two hundred dollars per year, the board shall issue to such partnership, corporation, or limited liability company organization or individual operating under a trade name a certificate of authorization commercial practice or a renewal thereof, which certificate of authorization shall commercial practice is not be transferable. Should If the board find finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. Should If a change occur occurs in any of the information submitted on the application of any partnership, corporation, or limited liability company organization or individual operating under a trade name within the term of authorization the certificate of commercial practice, such partnership, corporation, or limited liability company the organization or individual operating under a trade name shall file with the board a written report with respect thereto to the change within thirty days after such the change occurs. The provisions with respect to issuance, expiration, renewal, and reissuance of the certificates of registration of individuals contained in this chapter shall also apply to certificates of authorization commercial practice issued to partnerships, corporations, and limited liability companies an organization or individual operating under a trade name under this subsection. Partnerships, corporations, or limited liability companies shall be An organization or individual operating under a trade name is subject to disciplinary proceedings and penalties, and certificates of authorization shall be commercial practice are subject to suspension or revocation for cause in the same manner and to the

same extent as is provided with respect to ~~an individual persons~~ and ~~their the individual's~~ certificates of registration in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31. "Registrant" and "certificate of registration" in sections 43-19.1-26, 43-19.1-29, and 43-19.1-31, and the provisions of such sections, ~~shall for the purpose of such sections be deemed to include and apply respectively to any partnership, corporation, or limited liability company holding organization or individual operating under a trade name that holds a certificate of authorization commercial practice issued under this chapter, and to such certificate of authorization commercial practice.~~

**SECTION 28. AMENDMENT.** Section 43-19.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-29. Exemption clause.** This chapter ~~shall~~ does not be ~~construed~~ to prevent or affect:

1. The practice or offer to practice engineering by a ~~person~~ an individual not a resident or having no established place of business in this state, if that ~~person individual~~ is legally qualified by registration to practice engineering, ~~as defined in this chapter,~~ in another state or country ~~which that~~ extends similar privileges to ~~persons individuals~~ registered under this chapter. However, that ~~person must~~ individual shall make an application accompanied by the appropriate application fee to the board in writing ~~prior to before~~ practicing or offering to practice engineering, and may be granted a one-time temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to any applicant with respect to any other work not set forth in the temporary permit. A land surveyor ~~as defined in this chapter~~ may not receive a temporary permit under this subsection.
2. The work of an employee or a subordinate of a ~~person~~ an individual holding a certificate of registration under this chapter, or an employee of a ~~person~~ an individual practicing lawfully under subsection 1; provided such work does not include final engineering or surveying designs or decisions and is done under the direct supervision of and verified by a ~~person~~ an individual holding a certificate of registration under this chapter, or a ~~person~~ an individual practicing lawfully under subsection 1.
3. The practice of engineering or surveying for a county by a ~~person not registered under this chapter whose appointment as county engineer or county highway superintendent was in effect on January 1, 1967.~~
4. The practice of any other legally recognized profession or trade, nor ~~shall it be construed to~~ does the chapter permit registered professional engineers to perform duties requiring the services of a licensed architect, as provided by the laws of the state of North Dakota licensing and regulating architects and architecture.
5. ~~4.~~ The practice of engineering ~~and or~~ land surveying by any ~~person~~ individual regularly employed to perform engineering services solely for that ~~person's individual's~~ employer or for a subsidiary or affiliated corporation or limited liability company of that ~~person's individual's~~ employer, providing the ~~engineering services performed~~ are in connection with the property, products, or services of that ~~person's~~

individual's employer, unless the board determines the property, products, or services are of a unique type requiring registration to protect the public.

**SECTION 29. AMENDMENT.** Section 43-19.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-30. Duties of recorder.** It is unlawful for the recorder of any county or any county or any proper public authority to file or record any map, plat, survey, or other document within the definition of land surveying; which does not have impressed thereon and affixed thereto; the personal signature and seal of a registered professional land surveyor by whom the map, plat, survey, or other document was prepared.

**SECTION 30. AMENDMENT.** Section 43-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-31. Violation and penalties.** Any person ~~who that~~ practices; or offers to practice; engineering or land surveying in this state without being registered in accordance with the provisions of this chapter; ~~or~~ any person using or employing the words "engineer" ~~or~~ "engineering" ~~or~~ "professional engineer" ~~or~~ "surveyor" ~~or~~ "land surveyor"; "professional land surveyor"; or any modification or derivative ~~thereof of these terms~~ in that person's name ~~or~~ form of business; or activity, except as authorized in this chapter; ~~or~~ any person presenting or attempting to use the certificate of registration or the seal of another; ~~or~~ any person ~~who gives~~ giving any false or forged evidence of any kind to the board or to any member ~~thereof of the board~~ in obtaining or attempting to obtain a certificate of registration; or any person ~~who falsely impersonates~~ impersonating any other registrant of like or different name; ~~or~~ any person ~~who attempts~~ attempting to use an expired or revoked or nonexistent certificate of registration; ~~or who practices~~ practicing or ~~offers offering~~ to practice when not qualified; ~~or~~ any person ~~who falsely claims that~~ claiming that person is registered under this chapter; or any person ~~who violates~~ violating any of the provisions of this chapter; is guilty of a class B misdemeanor. It is the duty of all duly constituted officers of the state, and of all political subdivisions ~~thereof of the state~~, to enforce the provisions of this chapter.

**SECTION 31. AMENDMENT.** Section 43-19.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-33. Continuing professional education - Rules.** The board shall adopt rules to establish continuing education requirements for professional engineers and land surveyors. Compliance with these rules must be documented at the times, and in the manner, as is required by the board. A professional engineer or land surveyor who is exempt under subsection ~~5~~ 4 of section 43-19.1-29 but who has voluntarily registered under this chapter is exempt from the continuing professional education requirements under this section.

**SECTION 32.** A new section to chapter 43-19.1 of the North Dakota Century Code is created and enacted as follows:

**Retired registrant.** The board may recognize an individual who is no longer practicing as an engineer or land surveyor as a retired registrant.

**CHAPTER 369****HOUSE BILL NO. 1176**

(Human Services Committee)

(At the request of the State Board of Dental Examiners)

AN ACT to create and enact five new sections to chapter 43-20, a new subsection to section 43-28-02, three new sections to chapter 43-28, and section 43-28-18.2 of the North Dakota Century Code, relating to licensing of dental assistants and hygienists and dentists; to amend and reenact sections 43-20-03, 43-20-05, 43-20-06, 43-20-08, 43-20-09, 43-20-10, 43-20-12.2, 43-20-13.1, and 43-28-01, subsection 2 of section 43-28-06, sections 43-28-10, 43-28-11, 43-28-13, 43-28-15, 43-28-16, 43-28-17, and 43-28-18, subsection 1 of section 43-28-18.1, and sections 43-28-24 and 43-28-25 of the North Dakota Century Code, relating to the practice and licensing of dental assistants and hygienists and dentists; to repeal sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code, relating to the practice and licensing of dental hygienists and dentists; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.
4. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

**SECTION 2.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Dental hygienist licensing.** An individual seeking to practice dental hygiene in this state shall apply to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true to the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the board meeting at which the application is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an

application fee established by the board by rule. The board may grant a license to practice dental hygiene to an applicant who has met all of the following requirements:

1. The applicant is a graduate of a dental hygiene school accredited by the American dental association's commission on dental accreditation.
2. The applicant has passed an examination administered by the joint commission on national dental examinations.
3. The applicant has passed a clinical competency examination administered by a regional dental testing service or a licensing jurisdiction approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
5. Grounds for denial of the application under section 43-20-05 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

**SECTION 3.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Licensure by credential review.** Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least three years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule.

**SECTION 4.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**License renewal - Audit.**

1. Dental hygienist licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dental hygienist's license is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dental hygienist may not practice dental hygiene.
4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dental hygienist must apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dental hygienist providing proof of medical or other hardship rendering the dental hygienist unable to meet the deadline.
7. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

**SECTION 5. AMENDMENT.** Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-03. Dental hygienists - Practice by.** As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, modified general, or general supervision of a licensed dentist. General supervision may be ~~utilized only~~ used if the ~~following conditions are met:~~

1. The patient is a patient of record who has been examined by the dentist within the past twelve months;
2. The patient is being treated at the primary or satellite practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;
3. A current treatment plan is in place; and
4. Any delegated procedure is preauthorized by the supervising dentist. procedures are authorized in advance by the supervising dentist, except procedures which may only be used under direct supervision as established by the board by rule.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

**SECTION 6. AMENDMENT.** Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-05. Licenses and registrations - ~~Suspension, revocation, refusal to renew, and reinstatements~~ Denial and discipline.** ~~The board of dental examiners may suspend or revoke, with power to reinstate, or refuse to renew deny an application for or take disciplinary action against a dental hygienist's license or a registered or qualified dental assistant's registration, upon any one or more of the following grounds:~~

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.
2. Failure, neglect, or refusal to renew a license biennially.
3. Nonobservance or violation of this chapter, or of any board rule adopted under this chapter.
4. Gross ~~inefficiency~~ incompetency in the practice of dental hygiene. ~~The board may suspend or revoke, with power to reinstate, the license of any licensed dentist who permits any dental hygienist, operating under the dentist's supervision, to perform any operation other than that permitted under this chapter, or who knowingly permits any person who is not a licensed dental hygienist to perform any operations or services as such under that dentist's supervision.~~
5. Conviction of an offense determined by the board to have a direct bearing on the individual's ability to serve the public as a dental hygienist or a registered or qualified dental assistant, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
6. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
7. Abused, is dependent on, or addicted to the use of alcohol or drugs.

8. Engaged in fraud or deceit in obtaining a dental hygiene license or dental assisting registration.
9. Disclosed confidential information.
10. Received a fee for the referral of patients to a dentist or dental hygienist.
11. Used unethical measures to draw dental patronage from the practice of another licensee.
12. Fraudulently prescribed or dispensed drugs or medications.
13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a claim form, bill, or statement to a third party.
14. Advised or directed patients to dental laboratories or dental laboratory technicians for a dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians.
15. Violated the code of ethics adopted by the board by rule.
16. Had a registration or license suspended, revoked, or disciplined in another jurisdiction.
17. Failed to report to the board in writing within sixty days a violation of this chapter or chapter 43-28.
18. Practiced outside the scope of practice established by the board by rules and this chapter.

The procedure to be followed in the case of a suspension, revocation, or reinstatement must for taking disciplinary action must be the same as that prescribed by law in the case of suspension, revocation, or reinstatement of a licensed dentist the procedure required by section 43-28-18.2.

**SECTION 7. AMENDMENT.** Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-06. License - Cancellation - Inactive status.** At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. If a licensee fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental hygienist of the cancellation. The payment of the biennial fee within that thirty-day period, with an additional sum determined by the board, excuses the default. Upon payment of a fee determined by the board, a licensee dental hygienist may request to have the licensee's dental hygienist's license placed on inactive status upon expiration of the license. While on inactive status, the individual dental hygienist may not engage in the practice of dental hygiene in the state until the individual dental hygienist submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule of the board.

**SECTION 8. AMENDMENT.** Section 43-20-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-08. Unlawful to employ unlicensed hygienist - Unlawful to practice without license or registration.** ~~No~~ A person may not practice dental hygiene or practice as a registered or qualified dental assistant in the state of North Dakota, without first obtaining from the North Dakota state board of dental examiners a license authorizing such person to practice dental hygiene in this state, and it is unlawful for any person to employ an unlicensed dental hygienist for the performance of any operations or services as such, or permit such unlicensed person to perform any operations or services as such, under that person's supervision or registration. A person may not practice as a dental assistant outside the scope of practice established by the board by rule and section 43-20-13.

**SECTION 9. AMENDMENT.** Section 43-20-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-09. Violation of chapter a misdemeanor.** Any ~~A~~ person violating any provision of this chapter section 43-20-08 is guilty of a class B misdemeanor.

**SECTION 10. AMENDMENT.** Section 43-20-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-10. State board of dental examiners - Authority - Duty.** The ~~North Dakota state board of dental examiners~~ has the power and it is its duty to enforce the provisions of this chapter. The board has the power to make such rules and regulations, not inconsistent with this chapter, as may, in its judgment, be necessary for the proper enforcement of this chapter, and the examination of dental hygienists and registered and qualified dental assistants for their conduct and practice. For purposes of this chapter, the board has the powers set forth in section 43-28-06.

**SECTION 11. AMENDMENT.** Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12.2. Notice to board of change of address.** A licensed dental hygienist, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section.

**SECTION 12.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Registered and qualified dental assistant registration.** To be registered as a registered or qualified dental assistant, an individual shall apply and meet the requirements established by the board by rule.

**SECTION 13. AMENDMENT.** Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-13.1. Continuing education requirement for registered dental assistants Registration renewal.**

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:
  - a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
  - b. Proof of research, graduate study, teaching, or service as a clinician.
  - c. Proof of any other continuing education approved by the board.
2. The board may select a random sample of the registrants for audit of continuing education credits. Each registrant shall maintain certificates or records of continuing education credit. The board shall notify a registered dental assistant selected for a continuing education audit. If a registered dental assistant is selected for a continuing education audit, the dental assistant shall provide satisfactory documentation of attendance at or participation in the continuing education activities included on the registrant's sworn affidavit. The failure to comply with an audit may be grounds for nonrenewal of the registration. A dental assistant who fails to comply with the continuing education requirements may be reexamined by the board to determine the individual's competency to continue engaging in dental-assisting activities. If the board determines that the dental assistant is not qualified, the board shall suspend the registration until the individual provides acceptable evidence to the board of the individual's competency to practice as a dental assistant. All registrations of registered and qualified dental assistants expire on December thirty-first of every even-numbered year.
2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified dental assistant may not practice as a registered or qualified dental assistant.

4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.
6. The board may extend the renewal deadline for a registered or qualified dental assistant providing proof of medical or other hardship rendering the registered or qualified dental assistant unable to meet the deadline.

**SECTION 14. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-01. Definitions.** As used in this chapter and chapter 43-20, unless the context otherwise requires:

1. "Accredited dental school" means a dental school, college, or university accredited by the commission on dental accreditation of the American dental association or its successor.
2. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
- ~~2-~~ 3. "Board" means the state board of dental examiners.
- ~~3-~~ 4. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
4. 5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.
- ~~5-~~ 6. "License" means the right, authority, or permission granted by the board to practice dentistry in this state.
6. 7. For the purposes of this chapter, the term "practice Practice of dentistry" includes means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

**SECTION 15.** A new subsection to section 43-28-02 of the North Dakota Century Code is created and enacted as follows:

To registered dental hygienists, registered dental assistants, qualified dental assistants, and dental assistants practicing within the scope of practice and under supervision as required by chapter 43-20 and by rule.

**SECTION 16. AMENDMENT.** Subsection 2 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Examine applicants for licenses or registration to practice dentistry ~~or~~ dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.

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

**43-28-10. License and certificate required - Scope of practice.** A person may not practice dentistry in this state unless that person is a dentist. ~~A dentist shall practice within the scope of that dentist's education, advanced training as recognized by the board, and any specialty practice recognized by the American dental association or other professional entity recognized by the board.~~

**SECTION 18. AMENDMENT.** Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-11. Examination required - Application - Qualifications - Fees.** An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board ~~and shall submit to an examination by the board.~~ The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the ~~date of the examination~~ board meeting at which it is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule. ~~Additional costs of regional or other states' examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:~~

1. ~~Is a graduate of a dental college recognized by the board.~~
2. ~~Is of good moral character.~~

**SECTION 19.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Requirements for licensure.** The board may grant a license to practice dentistry to an applicant who has met all of the following requirements:

1. The applicant has a doctorate of dental surgery or doctorate of dental medicine degree from an accredited dental school.
2. The applicant has passed the examination administered by the joint commission on national dental examinations.

3. The applicant has passed a clinical competency examination administered by a regional dental testing service approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
5. Grounds for denial of the application under section 43-28-18 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

**SECTION 20.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**License renewals.**

1. Licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dentist's license is not revoked or grounds for denial under section 43-28-18 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dentist may not practice dentistry.
4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dentist must apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dentist providing proof of medical or other hardship rendering the dentist unable to meet the deadline.

**SECTION 21. AMENDMENT.** Section 43-28-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-13. License - When certificate issued - When reexamination required.** If an applicant has the necessary qualifications and successfully passes the examination for a license to practice dentistry in this state, or an equivalent examination in another state as set out in section 43-28-12.1, the board may:

1. ~~Issue to the applicant a license to practice dentistry in this state, which must be entered upon the records of the board.~~
2. ~~Issue said licensed dentist a certificate of registration in the form prescribed by the board. Any dentist so licensed and registered, who does not undertake the actual practice of dentistry in this state within five years from the date of the dentist's license and registration, shall, before engaging in the practice of dentistry in this state, notify the board of the intention in writing so to do, whereupon the . The board, after a full investigation, may reexamine said the dentist as to the dentist's qualifications to practice dentistry in this state should, if the board deem deems such reexamination necessary and notify such dentist thereof. The failure of such the dentist to give the written notice to the board required herein before engaging in the practice of dentistry in this state operates as a forfeiture of the dentist's license to practice dentistry is grounds for disciplinary action.~~

**SECTION 22. AMENDMENT.** Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-15. Licensure by credential review.** The board may issue a license and certificate of registration to practice dentistry in this state to ~~any individual who wishes to practice dentistry in North Dakota upon a practical examination, if the individual~~ an applicant who meets all of the following requirements:

1. ~~Has~~ The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. ~~Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character~~ Grounds for denial of the application under section 43-28-18 do not exist.
3. ~~Pays~~ The applicant pays to the board the fee determined by the board by rule.
4. ~~Delivers~~ The applicant delivers to the board a certificate from the examining or licensing board of every state jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that state, and is of good moral character jurisdiction.
5. ~~Demonstrates the individual's ability to the satisfaction of the board.~~

~~The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.~~

6. The applicant meets any requirement for licensure established by the board by rule.

**SECTION 23. AMENDMENT.** Section 43-28-16 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 24. AMENDMENT.** Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-17. Failure to pay biennial fee - Cancellation of license - Inactive status.** If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee dentist may request to have the licensee's dentist's license placed on inactive status upon expiration of the license. While on inactive status, the licensee dentist may not engage in the practice of dentistry in the state until the individual submits a dentist applies for reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

**SECTION 25. AMENDMENT.** Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-18. Grounds for revocation or suspension denial of or disciplinary action against license and certificate.** The board may revoke, suspend, limit, or restrict the scope of deny an application or take disciplinary action against the license and the certificate of registration of any applicant or dentist who has:

1. Been guilty of Engaged in dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance Abused, is dependent on, or addicted to the use of alcohol or drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.

6. ~~Become~~ Been grossly negligent in the practice of ~~the profession~~ dentistry.
7. ~~Practiced~~ Engaged in fraud ~~and or~~ or deceit in obtaining the license or in the practice of dentistry.
8. ~~Willfully betrayed~~ Disclosed confidential ~~relations~~ information.
9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit ~~licensed~~ dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a ~~licensed~~ dentist from employing any other ~~licensed~~ dentist or ~~licensed~~ dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to ~~demonstrate~~ meet minimum standards of professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence competence. When these deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed ~~auxiliary personnel~~ others to perform acts or provide dental services for which ~~the personnel are~~ they were not licensed or qualified or ~~are~~ were prohibited by law or rule from performing or providing.
15. ~~Willfully engaged in~~ Submitted fraudulent ~~submission~~ of insurance claims.
16. Made any false or untrue statements in ~~the~~ an application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.

20. Abandoned the dentist's practice as defined by in violation of rules adopted by the board.
21. Failed to report to the board as required under section 43-28-18.1.
22. Failed to practice within the scope of that dentist's education or advanced training as recognized by the board, the American dental association, or other professional entity recognized by the board.
23. Failed to release copies of dental or medical records requested by a patient of record or violated section 23-12-14. Dental records may include any document, charting, study models, doctor's notations, billing information, insurance document or combination of documents that pertains to a patient's medical history, diagnosis, prognosis, or medical condition, which is generated and maintained in the process of the patient's dental health care treatment.
24. Advised or directed patients to dental laboratories or dental laboratory technicians for any dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians without first having furnished the dental laboratory or dental laboratory technician a written prescription.
25. Worked or cooperated with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the referral of laboratory patrons for professional services.
26. Used the services of a person or entity not licensed to practice dentistry in this state, or constructed, altered, repaired, or duplicated a denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
27. Violated the code of ethics adopted by the board by rule.
28. Violated this chapter or rules adopted by the board.
29. Had the applicant's or dentist's license suspended, revoked, or disciplined in another jurisdiction.

**SECTION 26. AMENDMENT.** Subsection 1 of section 43-28-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A dentist shall report to the board in writing within ~~ninety~~ sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
  - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
  - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.

- c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

**SECTION 27.** Section 43-28-18.2 of the North Dakota Century Code is created and enacted as follows:

**43-28-18.2. Disciplinary procedure.**

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board may also initiate a complaint and investigation on the board's motion.
2. The board may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.
3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.
4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-17.1, until the board determines to proceed with a disciplinary action.
5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.
6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.
7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

**SECTION 28.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Temporary suspension - Appeal.**

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

**SECTION 29. AMENDMENT.** Section 43-28-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-24. Duplicate license and certificate - When issued - Fee.** If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by the applicant of the loss or destruction. The fee for a duplicate license must be determined by the board and the fee for issuing a duplicate certificate of registration must be determined by the board for a fee established by rule.

**SECTION 30. AMENDMENT.** Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-25. Unlawful acts - Penalty.** It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.
2. For any dentist to help or assist any unlicensed person to perform any act or operation that is defined as the practice of dentistry.
3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.
4. For any dentist to work or cooperate with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.
5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board which must contain:
  - a. The name and address of such unlicensed person;
  - b. The patient's name or number and, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;
  - c. The date on which it was written;
  - d. A prescription of the work to be done, with diagram, if necessary;
  - e. A specification of the type and quality of materials to be used; and
  - f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or the board's agent for two years.

6. For any dentist:
  - a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;
  - b. To fail to retain a duplicate copy thereof for two years; or
  - c. To refuse to allow the board or the board's agent to inspect such prescription during the two-year period of time.

7. For any unlicensed person:
- a. ~~To perform any such service without first having obtained such prescription;~~
  - b. ~~To fail to retain the original thereof for two years; or~~
  - c. ~~To refuse to allow the board or the board's agent to inspect it during such two-year period of time.~~
- to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
8. 2. For any person:
- a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
  - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
  - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
  - d. To practice dentistry in this state without a license and certificate of registration.
9. 3. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

**SECTION 31. REPEAL.** Sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code are repealed.

**SECTION 32. EFFECTIVE DATE.** Section 13 of this Act becomes effective on March 1, 2010.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 370****SENATE BILL NO. 2200**

(Senators J. Lee, Nelson, Nething)  
(Representatives Berg, Potter)

AN ACT to amend and reenact section 43-23-08.2 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers and salespersons.

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

**SECTION 1. AMENDMENT.** Section 43-23-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-08.2. License renewal - Continuing education required.** Commencing January 1, 2000, and every two years thereafter,

1. The commission may establish the conditions under which each applicant for renewal of a broker's or salesperson's license shall, in addition to the requirements of section 43-23-08, shall submit proof of participation in not less than sixteen hours of approved continuing education; six of which must be completed in the first year. If a broker or salesperson will not have been licensed two years on the date the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules adopted by the commission. In establishing the conditions for continuing education, the commission may determine the required number of hours, the frequency and conditions of reporting requirements, and all other terms and conditions of continuing education compliance. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses may not require passing of a test to qualify for satisfaction of this requirement. Licensees ~~shall~~ must have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.
2. A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.

3. The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 371

### SENATE BILL NO. 2099

(Human Services Committee)

(At the request of the State Board of Massage)

AN ACT to create and enact subsection 5 of section 43-25-02 of the North Dakota Century Code, relating to the definition of remote education; and to amend and reenact subsection 2 of section 43-25-02 and sections 43-25-03, 43-25-04, 43-25-05, 43-25-05.1, 43-25-06, 43-25-07, 43-25-09, 43-25-10, 43-25-13, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to regulating the practice of massage.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>149</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants. ~~"Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.~~

<sup>150</sup> **SECTION 2.** Subsection 5 of section 43-25-02 of the North Dakota Century Code is created and enacted as follows:

5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

**SECTION 3. AMENDMENT.** Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>149</sup> Section 43-25-02 was also amended by section 2 of Senate Bill No. 2099, chapter 371.

<sup>150</sup> Section 43-25-02 was also amended by section 1 of Senate Bill No. 2099, chapter 371.

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

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or
4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." or terms of similar meaning without a license issued by the board.

**SECTION 4. AMENDMENT.** Section 43-25-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-04. Exemptions.** The following persons are exempt from this chapter:

1. Schools that furnish massage services to their student athletes.
2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist. Students may practice homework unsupervised on other students, family, or friends, but no fee or tip may be charged or accepted. These massages may only be performed at the school or at the residence of the student, family member, or friend.
3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities are performed in the course of the bona fide practice of the individual's profession or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage and does not perform massage while working in a massage establishment.
4. A health spa or similar business to the extent the spa or business is performing superficial applications used for beautification or health of the skin, including salt glows and contouring.
5. Any individual instructor demonstrating massage techniques as a component of a board-approved seminar.

**SECTION 5. AMENDMENT.** Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

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

member of the board holds office until that member's successor is appointed and qualified.

Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, and secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

**SECTION 6. AMENDMENT.** Section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-05.1. Powers and duties of the board.** The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board ~~shall~~ may periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.
4. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

**SECTION 7. AMENDMENT.** Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-06. Removal of members of board of massage - Officers of the board - Meeting.** The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

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

**SECTION 8. AMENDMENT.** Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-07. Requisites for application licensure and examination - Subjects - Minimum passing grade - Fee for reexamination.**

1. Any person who is eighteen years of age or more, a high school graduate or legal equivalent, and of good moral character and

temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:

- a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board;
  - b. Passes an examination conducted or approved by the board; and
  - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to pass the examination is entitled to a reexamination within six months obtain licensure within six months of the initial application is entitled to reapply within six months after notification that the application was rejected, upon payment of an additional a fee of fifty dollars or a lesser amount established by the board; but two reexaminations. Two applications exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

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

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

1. Each license must be conspicuously displayed at the place of practice.
2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than six units of a licensee's annual continuing education requirements may be by remote education. To qualify as continuing education, the remote education must be sponsored by a nationally recognized provider and must be board-approved for content and suitability.
3. Continuing education of at least thirty-two continuing education hours, or equivalent college credits, submitted every two years is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than twelve hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability.
  - a. Odd-numbered licensed individuals report their continuing education in odd-numbered years and even-numbered licensed individuals report their continuing education in even-numbered years, based on the calendar year.

- b. This subdivision applies for the initial licensure period. Individuals licensed on or before May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even, would need to report at least sixteen hours. Those not required to submit continuing education that initial January first would report at least twenty-four hours by the following January first. Individuals licensed after May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even would not be required to report that cycle, but would report at least forty-eight hours for the next cycle. Those not required to submit continuing education hours that initial January first would report at least sixteen hours by the following January first. Thereafter, initial licensees would follow the normal renewal reporting cycle.
- c. This subdivision applies to renewing licensees, for the implementation of the continuing education reporting cycle. On or before January 1, 2010, even-numbered licensees would submit at least sixteen hours of continuing education. On or before January 1, 2011, odd-numbered licensees would submit at least thirty-two hours of continuing education.
- 3- 4. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have a physical examination by a competent medical examiner. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.
- 4- 5. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee ~~and~~. The board may require production of a new certificate of physical examination and evidence of any required continued educational hours being completed.
- 5- 6. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

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

**43-25-10. ~~Revocation of license~~ Disciplinary actions - Complaints.**

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
  - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
  - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section

12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.

- c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
  - d. The licensee is addicted to the habitual use of intoxicating liquors, ~~narcotics, or stimulants~~ or other legal or illegal drugs, to the extent the licensee is ~~incapacitated~~ compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
  - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or ~~vitamins,~~ or the licensee infringes on any other licensed profession.
  - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
  - g. The licensee has violated this chapter or any rule adopted by the board.
2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to one hundred dollars.
3. A complaint may be submitted to the board by any person or on its own motion. A complaint ~~must~~ may be signed by the complainant ~~and verified under oath.~~ The president may initiate an investigation of the complaint and report to the board.
- ~~3-~~ 4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

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

**43-25-13. Records to be kept by the secretary-treasurer of the board.** The secretary-treasurer of the board shall keep a record ~~book~~ of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied; ~~the fee to belong to the secretary-treasurer. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.~~

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

**43-25-14. Compensation of board members - Clerks.** The board members shall receive compensation in an amount of ~~sixty-two to be established by rule~~ not to exceed one hundred dollars per day or prorated for partial days for each day or portion of a day the member is actually engaged in the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. ~~The secretary-treasurer may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.~~

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

**43-25-18. Reciprocity.** Any person who has been duly licensed in another state to practice massage in a state that ~~has and maintains a standard of practice which is substantially the same as that maintained~~ meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 372****SENATE BILL NO. 2358**

(Senator Dever)

(Representatives L. Meier, Nathe)

AN ACT to create and enact a new section to chapter 43-28.1 of the North Dakota Century Code, relating to a dental loan repayment program; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 43-28.1 of the North Dakota Century Code is created and enacted as follows:

**Loan repayment program for dentists in public health and nonprofit dental clinics.**

1. If funds have been appropriated specifically for loan repayment to dentists who practice in a public health setting or a nonprofit dental clinic that uses a sliding fee schedule to bill patients, during the first year of each biennium the health council shall select from a pool of applicants no more than three dentists who provide or will provide dental services in a public health clinic or nonprofit dental clinic that uses a sliding fee schedule to bill patients. A dentist who receives a grant under this section shall use the grant funds to repay the dentist's educational loans. The maximum grant award is sixty thousand dollars per recipient which is paid to the recipient over a two-year period.
2. Unless otherwise provided under this section, sections 43-28.1-02 and 43-28.1-04, subsections 1, 2, and 3 of section 43-28.1-03, and sections 43-28.1-05, 43-28.1-06, 43-28.1-07, 43-28.1-08, and 43-28.1-09 apply to this grant.
3. A recipient who receives a grant under this section shall serve three years as a full-time practicing dentist in the public health setting or a nonprofit clinic that uses a sliding fee schedule to bill patients and must be paid the grant funds during the first two years of this service.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing grants to dentists under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 373****SENATE BILL NO. 2113**

(Judiciary Committee)

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

AN ACT to amend and reenact section 43-30-06 of the North Dakota Century Code, relating to applicants for licensure as a private investigative or private security service.

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

**SECTION 1. AMENDMENT.** Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-30-06. License and registration applications.** Every person who desires to obtain a license or registration, including nonlicensed members, partners, officers, and owners of at least ten percent interest in the entity, shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board shall require each applicant to submit to a state and nationwide criminal history background record check. The nationwide criminal history background record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history background record check are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history background record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history background record check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history background record check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history background record check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history background record check was performed within the sixty days immediately preceding the date of the application. A state criminal history background record check is not required under this section if an applicant for registration provides to the board the results of a state criminal history background record check performed by the state in which the applicant currently resides and if the state criminal history background record check was performed within the sixty days immediately preceding the date of the application.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 374****HOUSE BILL NO. 1102**

(Judiciary Committee)

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

AN ACT to amend and reenact section 43-30-11 of the North Dakota Century Code, relating to the renewal period for private investigative or security licenses.

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

**SECTION 1. AMENDMENT.** Section 43-30-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-30-11. Renewal of licenses.** A license to provide private investigative or security services ~~is valid for a two-year period, must be renewed on an annual basis ending on September thirtieth of each odd-numbered year.~~ must be renewed on an annual basis ending on September thirtieth of each odd-numbered year. License fees must be prorated for the portion of each license period the license is in effect.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 375****HOUSE BILL NO. 1103**

(Judiciary Committee)

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

AN ACT to amend and reenact subsection 8 of section 43-30-16 of the North Dakota Century Code, relating to the initial and renewal registration fees for private investigative services and private security services.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 43-30-16 of the North Dakota Century Code is amended and reenacted as follows:

8. The initial registration fee to provide private investigative service or private security service may not exceed ~~twenty~~ twenty-five dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed ~~five~~ twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

Approved March 5, 2009  
Filed March 5, 2009

**CHAPTER 376****HOUSE BILL NO. 1145**

(Human Services Committee)

(At the request of the State Board of Psychologist Examiners)

AN ACT to create and enact a new section to chapter 43-32 of the North Dakota Century Code, relating to licensing of psychologists; to amend and reenact sections 43-32-01, 43-32-08.1, 43-32-13, 43-32-17, 43-32-20, 43-32-20.1, and 43-32-27, subsection 1 of section 43-32-27.1, and section 43-32-30 of the North Dakota Century Code, relating to licensing of psychologists and the practice of psychology; and to repeal section 43-32-19 of the North Dakota Century Code, relating to licensing of psychologists.

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

**SECTION 1. AMENDMENT.** Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-01. Definitions.**

1. "Board" means the North Dakota state board of psychologist examiners.
2. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
3. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.
4. "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.
5. "Licensee" means an industrial-organizational psychologist or a psychologist.
6. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, and other therapeutic

techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

- 6- 7. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.
- 7- 8. "Psychology resident" means an individual who has ~~received from a school or college a doctorate degree in a program of study substantially psychological in nature, and who met the requirement of subdivision b of subsection 1 of section 43-32-20,~~ is involved in supervised psychological employment, and has registered with the board.
- 8- 9. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology or psychology.

**SECTION 2. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.1. Continuing education requirements.** The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter if the licensee fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 3. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-13. Annual license and fee.** Before January first of each year, every licensee shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual license fee, shall issue the licensee a certificate of annual license. An individual may not hold out as an industrial-organizational psychologist or a psychologist until the annual license fee is paid. The board may deny renewal of the license of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee at the address on file with the board.

**SECTION 4. AMENDMENT.** Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-17. License required for practice - Titles.**

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology ~~or represent that person to be a psychologist in this state unless that person is an individual who is~~

licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology or represent that person to be an industrial-organizational psychologist in this state unless that person is an individual who is licensed as a psychologist or an industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter.

2. A psychologist person may not use the title "psychologist" or similar title in conjunction with the practice of psychology. An industrial-organizational psychologist unless that person is licensed as a psychologist. A person may not use the title titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" in conjunction with the practice of industrial-organizational psychology. An industrial-organizational psychologist may not use the title "psychologist" or similar title representing that the individual unless that person is licensed as a psychologist or industrial-organizational psychologist.
3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or "industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

**SECTION 5.** A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

**Licensing applicant licensed in other jurisdictions.** The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology and industrial-organizational psychology, and meets one of the following requirements:

1. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
2. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.

**SECTION 6. AMENDMENT.** Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-20. Licensing - Written and oral examination - Qualifications of applicants.** The board shall issue a license to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and demonstrates to the board that the applicant meets the requirements of subsection 1 or 2.

1. An applicant for licensure as a psychologist shall demonstrate the applicant all of the following:

- a. ~~Will~~ The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct, ~~1992, or revised editions~~ if adopted by the board by rule.
  - b. ~~Has~~ The applicant has received, from an ~~accredited~~ a school or college as defined by this chapter a doctorate degree in a program of studies ~~substantially psychological in nature~~ which meets any of the following requirements:
    - (1) The program is accredited by the American psychological association or the Canadian psychological association.
    - (2) The program is designated as a doctoral program in psychology by the association of state and provincial psychology boards.
    - (3) The program is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.
  - c. ~~Has~~ The applicant has passed the examinations, written, oral, or both, as the board determines necessary.
  - d. ~~Has~~ The applicant has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which ~~must~~ may be postdoctoral. Both years of experience must comply with the board's rules.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate ~~the applicant~~ all of the following:
- a. ~~Will~~ The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct, ~~1992, or revised editions~~ if adopted by the board by rule.
  - b. ~~Has~~ The applicant has received, from a school or college, a doctorate degree in a program of studies ~~substantially psychological in nature~~ accredited by the American psychological association or an accrediting body approved by the board by rule.
  - c. ~~Has~~ The applicant has passed the examinations, written, oral, or both, as the board determines necessary.
  - d. ~~Has~~ The applicant has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
    - (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.

- (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.

**SECTION 7. AMENDMENT.** Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-20.1. Postdoctoral supervised psychological employment.** This section applies to postdoctoral supervised ~~psychological~~ psychological employment in the practice of psychology and industrial-organizational psychology. Supervision may only be performed by a psychologist or industrial-organizational psychologist with a competency in supervision in professional psychology in the area of practice being supervised.

Supervision of an applicant for ~~psychologist licensure~~ must include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis, either face-to-face or through distance communications. The remaining hour may be with other ~~mental health~~ professionals designated by the supervisor and competent in the area of practice being supervised. ~~The board may approve an exception to the weekly supervision requirement for a week during which the supervisor was ill or otherwise unable to provide supervision.~~ The board may prorate the two hours per week of supervision for individuals preparing for licensure on a part-time basis.

The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

**SECTION 8. AMENDMENT.** Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-27. Denial - Revocation or suspension of license - Grounds.**

1. The board, after notice, hearing, and an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any license issued or applied for under this chapter and may otherwise discipline a licensee or an applicant upon proof the applicant or licensee:
  - a. Has been convicted of an offense determined by the board to have a direct bearing upon an individual's ability to serve the public as a psychologist or industrial-organizational psychologist, or if the board finds, after the conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Is using any narcotic or alcoholic beverage to an extent or in a manner dangerous to the applicant or licensee, any other person, or the public, or to an extent that the use impairs the applicant's or licensee's ability to perform the practice of psychology or industrial-organizational psychology with safety to the public unable to practice psychology with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

- c. Has impersonated another individual holding a psychology or industrial-organizational psychology license or allowed another person to use the licensee's license.
  - d. Has used fraud or deception in applying for a license or in taking an examination under this chapter.
  - e. Has allowed the licensee's name or license issued under this chapter to be used in connection with any person who performs psychological services outside of the area of that person's training, experience, or competence.
  - f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
  - g. Has engaged in any form of unethical conduct as defined in ethical principles of psychologists and code of conduct as ~~adopted and published by~~ of the American psychological association, ~~1992, or revised editions~~ if adopted by the board by rule.
  - h. Has become grossly negligent in the practice of psychology or industrial-organizational psychology.
  - i. Has willfully or negligently violated this chapter.
  - j. Has engaged in an act in violation of rules adopted by the board.
  - k. Has had a license revoked or suspended or was disciplined in another jurisdiction.
2. An individual whose license has been revoked under this section may not reapply for licensure ~~after~~ for at least two years ~~have elapsed from~~ after the date of revocation.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person aggrieved by the actions of a licensee may file a written complaint with the board citing the specific allegations of misconduct by the licensee. The board shall notify the licensee of the complaint and request a written response from the licensee. The board may establish procedural exceptions for processing multiple complaints from the same complainant.

**SECTION 10. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-30. Persons exempt from this chapter.** This chapter does not apply to:

1. ~~Any individual in the employ of any federal, state, county, or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of the individual are a part of the duties of the person's office or position with such agency, nonprofit corporation, or institution. This exemption is not available or effective after July 1,~~

~~2004.~~ However, the exemption period may be extended by the board in individual cases if hardship or other good cause is shown by the agency, nonprofit corporation, or institution covered, or if the individual affected has received from a school or college a master's degree in psychology and the individual's activities and services with such agency, nonprofit corporation, or institution are performed under the supervision of a psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.

- ~~2.~~ 2. A student or intern pursuing a course of study in psychology or industrial-organizational psychology at a school or college, if the activities and services are a part of the individual's supervised course of study; provided the and are under the supervision of a licensed psychologist or industrial-organizational psychologist. The student or intern does shall not use the title "psychologist" or "industrial-organizational psychologist" and the student or intern status is shall be clearly stated.
- ~~3.~~ 2. A nonresident licensed or certified in the state of the individual's residence who does not practice psychology or industrial-organizational psychology in this state for a period of more than thirty days in any calendar year.
- ~~4.~~ 3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology or industrial-organizational psychology unless the lecturer is licensed under this chapter.
- ~~5.~~ 4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
- ~~6.~~ 5. A person certified, licensed, or registered in this state in another health care profession, the or as a member of the clergy functioning in a ministerial capacity, whose scope of practice of which is consistent with that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological services.
- ~~7.~~ 6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
- ~~8.~~ 7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person

continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

9. ~~A psychology resident performing services supervised as provided under section 43-32-20.1.~~

**SECTION 11. REPEAL.** Section 43-32-19 of the North Dakota Century Code is repealed.

Approved April 24, 2009

Filed April 29, 2009

**CHAPTER 377****HOUSE BILL NO. 1437**

(Representatives Kreidt, Bellew, Nelson, Pollert, Wieland)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-34 of the North Dakota Century Code, relating to criminal history record checks of nursing home administrators; and to amend and reenact subsection 1 of section 43-34-02 and sections 43-34-03, 43-34-05, 43-34-11, and 43-34-12 of the North Dakota Century Code, relating to licensing of nursing home administrators.

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

<sup>151</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The state board of examiners for nursing home administrators for applicants for licensure or licensees under chapter 43-34, except that criminal history record checks for licensees need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-34-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Two members of the board must be the state health officer and the executive director of the department of human services or the members' designees.

**SECTION 3. AMENDMENT.** Section 43-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-03. Qualifications for licensure.** The board ~~has authority to~~ may issue licenses to qualified ~~persons~~ individuals entitling ~~them~~ the individuals to serve and practice nursing home administration or otherwise hold themselves out as duly licensed nursing home administrators, and shall establish qualification criteria for such ~~persons~~ individuals by rule. ~~No license may be issued to a person unless the person has met the following conditions:~~

1. ~~The person is at least eighteen years of age, of good moral character, and of sound physical and mental health.~~
2. ~~If the applicant for license is deemed not to be qualified by the board after the initial evaluation and testing, then the board may prescribe a course of instruction and training, which course must be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; laws governing the~~

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<sup>151</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of Senate Bill No. 2152, chapter 379, and section 1 of Senate Bill No. 2162, chapter 422.

operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a nursing home.

3. The person has passed an examination administered by the board and designed to test for competence in the subject matter referred to in subsection 2.

All persons applying An applicant for a license must meet the conditions and requirements as may be prescribed by the board by rule. However, a person meeting the standards of good moral character, sound physical and mental health, and otherwise suitable, and who was a nursing home administrator during all of the calendar year immediately preceding the calendar year in which the state licensing program becomes effective, may be granted a waiver for a period of two years after July 1, 1969, or until June 30, 1971, whichever is earlier, to allow the person or persons to meet the conditions or requirements as set by this board.

**SECTION 4. AMENDMENT.** Section 43-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-05. License fees.** Each person individual licensed as a nursing home administrator is required to shall pay a license fee in an amount to be fixed by the board, which fee may not exceed one two hundred fifty dollars per annum. Any licensee, or applicant for license, may take a special examination for the purpose of being eligible for reciprocity with other states, upon the payment of an additional fee to be established by the board for that purpose.

**SECTION 5. AMENDMENT.** Section 43-34-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-11. Emergency licenses.** In the event of the death or other an unexpected removal of a licensed vacancy in a nursing home administrator from the administrator's position, the owner, the governing body, or other appropriate authority of the nursing home may designate an acting administrator to whom the board may issue an emergency license. This emergency license is in force for a period not to exceed ninety days but may be renewed for an additional ninety days by the board upon good cause shown.

**SECTION 6. AMENDMENT.** Section 43-34-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-12. Reciprocity with other states Licensure of individuals licensed in other jurisdictions.** The board may issue a nursing home administrator's license, without examination, to any person individual who holds a current license as a nursing home administrator from another jurisdiction, provided that if the board finds that the standards for licensure at the time the license was issued in the other jurisdiction were are at least the substantial equivalent of those prevailing in this state at the time of application and that the applicant is otherwise qualified.

**SECTION 7.** A new section to chapter 43-34 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.** The board shall require an applicant for licensure under section 43-34-04, 43-34-11, or 43-34-12 to submit to a statewide and nationwide criminal history record check. The board may require any licensee to submit to a statewide and nationwide criminal history check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

Approved April 24, 2009

Filed April 29, 2009

## CHAPTER 378

### HOUSE BILL NO. 1093

(Human Services Committee)

(At the request of the North Dakota Board of Social Work Examiners)

AN ACT to amend and reenact subsection 4 of section 43-41-02, subsection 4 of section 43-41-04, and subsection 1 of section 43-41-08 of the North Dakota Century Code, relating to the licensing of social workers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Nothing in this chapter prevents the employment of social work designees by hospitals, basic care facilities, or skilled nursing facilities, provided these ~~persons~~ individuals work under the direction of a social worker or social work consultant licensed under this chapter and that the board be notified of the name of the designee's employer and the name of the licensee who is providing direction or consultation to the designees.

**SECTION 2. AMENDMENT.** Subsection 4 of section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

4. The board shall issue a license as a licensed independent clinical social worker to an applicant who:
  - a. Has a doctorate or master's degree in social work from a college or university.
  - b. Has passed an examination approved by the board for this purpose.
  - c. Has satisfied the board that within a four-year period the applicant has successfully completed ~~within four years~~, three thousand hours of post-master's clinical social work experience under the supervision of a ~~licensed certified social worker who has two years of experience~~, a licensed independent clinical social worker, or, if an applicant began that supervised clinical social work experience before August 1, 2009, a licensed certified social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist.
  - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

**SECTION 3. AMENDMENT.** Subsection 1 of section 43-41-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint the North Dakota board of social work examiners which must consist of six members, two of whom must be, at the time of initial appointment, licensed social workers<sub>71</sub>; one of whom must be, at the time of initial appointment, a licensed certified social worker<sub>71</sub>; one of whom must be, at the time of initial appointment, a licensed independent clinical social worker<sub>71</sub> and two of whom must be laypersons. Board members must demonstrate no conflict of interest.

Approved April 21, 2009

Filed April 22, 2009

## CHAPTER 379

### SENATE BILL NO. 2152

(Human Services Committee)

(At the request of the Marriage and Family Therapy Licensure Board)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; to amend and reenact sections 43-53-01, 43-53-05, 43-53-06, 43-53-07, 43-53-08, 43-53-09, 43-53-10, and 43-53-12 of the North Dakota Century Code, relating to marriage and family therapy licensure and practice; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>152</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The marriage and family therapy licensure board for applicants, licensees, or investigations under chapter 43-53, except that criminal history record checks need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Section 43-53-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Advertise" includes the issuing or causing to be distributed any card, sign, or device to any person; the causing, permitting, or allowing any sign or marking in or on any building, radio, or television; or advertising by any other means designed to secure public attention.
2. "Associate marriage and family therapist" means an individual who has completed the educational requirements for a marriage and family license and who has successfully passed the licensing examination, but who has not yet successfully completed the supervised work experience requirement for licensure as a marriage and family therapist.
3. "Board" means the North Dakota marriage and family therapy licensure board.
- ~~3.~~ 4. "Licensed marriage and family therapist" means an individual who holds a valid license issued under this chapter.

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<sup>152</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of House Bill No. 1437, chapter 377, and section 1 of Senate Bill No. 2162, chapter 422.

- 4- 5. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders.
- 5- 6. "Practice of marriage and family therapy" means the rendering of marriage and family therapy services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.
- 6- 7. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor.
- 7- 8. "Recognized educational institution" means any educational institution that grants a ~~baccalaureate~~ master's or higher degree that is recognized by the board and by a regional accrediting body, or a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.
- 8- 9. "Use a title or description of" means to hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, calling cards, or other instruments of professional identification.

**SECTION 3. AMENDMENT.** Section 43-53-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-05. Board powers and duties.**

1. The board shall administer and enforce this chapter. The board shall adopt rules as the board determines necessary.
2. The board shall examine and pass on the qualifications of all applicants and shall issue a license to each successful applicant. The board shall adopt a seal which must be affixed to all licenses issued by the board.
3. The board may authorize expenditures determined necessary to carry out this chapter.
4. ~~Four~~ Three of the members of the board constitute a quorum. The board may employ attorneys, accountants, experts, and other employees as necessary for the proper performance of the board's duties.
5. The board shall adopt a nationally recognized code of ethics for the practice of marriage and family therapy.
6. The board shall establish continuing education requirements for license renewal.

7. The board shall publish an annual list of the names and addresses of all individuals licensed under this chapter.

**SECTION 4. AMENDMENT.** Section 43-53-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-06. Licenses.**

1. Each individual desiring to obtain a license as a practicing marriage and family therapist shall submit an application to the board, upon such form and in such manner as the board prescribes. An applicant shall furnish evidence that the applicant:
  - a. Is of good moral character;
  - b. Has not engaged in any practice or conduct that would be a ground for ~~revoking a license~~ discipline under this chapter; and
  - c. Is qualified for licensure pursuant to the requirements of this chapter.
2. ~~Before~~ An individual who was actively practicing marriage and family therapy in this state before January 1, 2008, an applicant and whose application is received by the board before January 1, 2010, may be issued a license by the board if the applicant meets the qualifications set forth in subdivisions a and b of subsection 1 and provides evidence to the board that the applicant meets educational and experience qualifications as follows:
  - a. An appropriate graduate degree, as defined by the board, from a regionally accredited institution so recognized at the time of granting such degree.
  - b. At least five years of clinical experience in the practice of marriage and family therapy, and membership or certification by an appropriate professional organization, as defined by the board.
3. ~~After December 31, 2007, an~~ An applicant may be issued a license by the board if the applicant meets the qualifications set forth in subsection 1 and provides satisfactory evidence to the board that the applicant:
  - a. Holds a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a master's degree in marriage and family therapy, as determined by the board.
  - b. Has successfully completed two calendar years of work experience in marriage and family therapy under qualified supervision following receipt of a qualifying degree.
  - c. Has passed ~~a national~~ the examination administered or adopted by the board.

4. An applicant may be issued an associate marriage and family therapist license by the board if the applicant meets the qualifications set forth in subsection 1 and has provided the board with satisfactory evidence that the applicant meets the requirements in subdivisions a and c of subsection 3. Associate marriage and family therapists must practice under the supervision of a board qualified supervisor and must obey the same laws and rules as a marriage and family therapist. An associate marriage and family therapist license lasts for one year and may be renewed for up to four additional years.
5. The board may adopt rules concerning reinstatement of lapsed licenses, voluntary termination, or emeritus status.
6. The board may require an applicant for licensure or a licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

**SECTION 5. AMENDMENT.** Section 43-53-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-07. Examination.**

1. The board shall conduct an examination at least once a year at a time and place designated by the board. Examinations may be written or oral as determined by the board. The board may create its own examination or adopt a nationally recognized examination. In any written examination each applicant must be designated so that the applicant's name is not disclosed to the board until the examination has been graded. Examinations must include questions in such theoretical and applied fields as the board determines most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. An applicant is deemed to have passed an examination upon affirmative vote of at least four members of the board.
2. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

**SECTION 6. AMENDMENT.** Section 43-53-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-08. Reciprocal licenses License by endorsement.** The board shall issue a license by examination of credentials to any applicant licensed or certified as a marriage and family therapist in another state for which the requirements for the license or certificate are equivalent to or exceed the requirements of this state, provided the applicant submits an application on forms prescribed by the board and pays the original licensure fee prescribed by this chapter.

**SECTION 7. AMENDMENT.** Section 43-53-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-09. Fees.** A fee, as determined by the board, must be paid to the board for original licensure. A fee may also be established for the licensure examination. A license is valid for two years and must be renewed biennially, with the renewal fee being determined by the board. The board may also establish a fee for a duplicate license. Any applicant for renewal of a license that has expired must be required to pay a ~~registration~~ late fee determined by the board. The board may also establish a fee for continuing education sponsors. The fees established under this section must be adequate to establish and maintain the operation of the board. Payment of a late fee is not a defense to a charge of practicing without a license.

**SECTION 8. AMENDMENT.** Section 43-53-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-10. Disciplinary proceedings.**

1. The board may deny, ~~revoke, or suspend an application or institute a disciplinary proceeding concerning a license granted under this chapter~~ licensee on the following grounds:
  - a. Conviction by a court of competent jurisdiction of an offense that the board determines to be of such a nature as to render the licensee unfit to practice marriage and family therapy. The board ~~shall~~ may compile, maintain, and publish a list of such offenses.
  - b. Violation of ethical standards of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall publish such ethical standards.
  - c. Fraud or misrepresentation in obtaining a license.
  - d. Any just and sufficient cause that renders a licensee unfit to practice marriage and family therapy.
2. ~~A licensee~~ An applicant may be denied a license, and a licensee may be suspended, or revoked, placed on supervised or unsupervised probation, required to take corrective action, attend continuing education, or fined up to two hundred dollars per violation for the reasons set forth in subsection 1. A licensee licensee may not be denied, suspended, or revoked disciplined under this section except by majority vote of the full board, notwithstanding any other provision of this chapter. The board may also charge the licensee with its reasonable expenses and reasonable attorney fees for any disciplinary matter resulting in disciplinary action.
3. Any person may file a complaint with the board seeking ~~denial, suspension, or revocation~~ discipline of a licensee issued or to be issued by the board licensee. The complaint must be in a form prescribed by the board and must be verified under oath by the complainant or a duly authorized officer of a complainant. If the board determines that a complaint alleges facts that, if true, would require ~~denial, revocation, or suspension~~ discipline of a licensee licensee, the board promptly shall institute a hearing. If the board determines a complaint does not state facts warranting a hearing, the complaint may be dismissed. The board may institute a hearing for ~~denial, suspension, or revocation~~ discipline of a licensee licensee on its own motion.

4. Any person may be permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses upon a showing of an interest in such proceeding.
5. Any individual ~~whose license~~ who has been suspended or revoked may not apply to the board for vacation of the suspension until the time specified in the board's order is complete or for reinstatement of the license until one year after the board's order or such other time as specified in the board's order is complete.

**SECTION 9. AMENDMENT.** Section 43-53-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-12. Penalty.** Any person who ~~violates practices without a license in violation of~~ this chapter is guilty of a class B misdemeanor.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 380****HOUSE BILL NO. 1361**

(Representatives Grande, Kasper, Ruby)  
(Senators Klein, J. Lee, Triplett)

AN ACT to create and enact subsection 9 to section 43-55-08 and two new sections to chapter 43-55 of the North Dakota Century Code, relating to professional employer organizations; to amend and reenact sections 43-55-03 and 43-55-05 of the North Dakota Century Code, relating to licensing requirements for professional employer organizations; and to declare an emergency.

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

**SECTION 1.** Subsection 9 to section 43-55-08 of the North Dakota Century Code is created and enacted as follows:

9. Upon request of the secretary of state or attorney general, a professional employer organization promptly shall provide an audited financial statement verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

**SECTION 2. AMENDMENT.** Section 43-55-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-55-03. Licensing requirements.**

1. ~~After October 4, 2007,~~ a A person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following information:
  - a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
  - b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.

- c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
  - d. The professional employer organization's taxpayer or employer identification number.
  - e. The date of the end of the applicant's fiscal year.
  - f. A list ~~by jurisdiction of each name under~~ of jurisdictions in which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.
  - g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
  - h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
  - i. ~~A financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under this subdivision for the entire period of its operation~~ section 43-55-05.
  - j. A copy of the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount as provided under section 43-55-05.
3. A license issued under this section is valid for one year and may be renewed within sixty days before the expiration of the license by submitting to the secretary of state:
    - a. The information required in subsection 2;
    - b. The license fee provided in section 43-55-04; and
    - c. A bond as provided under section 43-55-05.

4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of state the information required in subsection 2 along with the required license fee.
  - b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:
    - (1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or
    - (2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
  - e. The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b.
5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
  6. 5. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

**SECTION 3. AMENDMENT.** Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-55-05. Financial capability Bond.**

1. A professional employer organization shall maintain ~~either:~~
4. A minimum working capital of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state with the license application and each annual renewal; or
2. A a bond with a minimum value of the greater amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to

the secretary of state but not to exceed five hundred thousand dollars as reflected in the financial statement submitted to the secretary of state.

2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due. A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.
4. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

**SECTION 4.** Two new sections to chapter 43-55 of the North Dakota Century Code are created and enacted as follows:

**Confidential records.**

1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
2. All audited financial reports and the employers' quarterly contribution and wage report to job service North Dakota are confidential except to the extent necessary for the proper administration of this chapter by the secretary of state or the attorney general.

**Interagency cooperation.** A state agency, in performing duties under other laws that affect the regulation of professional employer organizations, shall cooperate with the secretary of state as necessary to administer and enforce this chapter.

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

Approved April 21, 2009  
Filed April 22, 2009

# OFFICES AND OFFICERS

## CHAPTER 381

### HOUSE BILL NO. 1530

(Representative L. Meier)  
(Senator Nodland)

AN ACT to amend and reenact section 44-01-05 of the North Dakota Century Code, relating to oaths of civil officers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 44-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**44-01-05. Oath of civil officers.** Each civil officer in this state before entering upon the duties of that individual's office shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. The oath must be endorsed upon the back of, or attached to, the commission, appointment, or certificate of election. The term civil officer includes every elected official and any individual appointed by such elected official; any individual appointed by the governor and required by section 16.1-09-02 to file a statement of interests with the secretary of state; appointed member of any state authority, board, bureau, commission, and council; and the appointed head of any state agency and agency division, whether the individual serves with or without compensation. Except for an individual appointed to fill a vacancy existing in the legislative assembly, the term does not include any individual receiving a legislative appointment. For purposes of this chapter and chapter 44-05, the term civil officer has the same meaning as public officer.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 382****HOUSE BILL NO. 1220**

(Representatives Nathe, Porter, Thoreson)  
(Senator Stenehjem)

AN ACT to amend and reenact subsection 8 of section 44-04-17.1 of the North Dakota Century Code, relating to the definition of a meeting.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

8. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:
- (1) A quorum of the members of the governing body of a public entity regarding public business; or
  - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" ~~includes work sessions~~, but does not include:
- (1) A chance or social gathering where gathering at which public business is not considered and does not include the;
  - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and
  - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

Approved March 19, 2009

Filed March 24, 2009

**CHAPTER 383****SENATE BILL NO. 2259**

(Senators Nething, Fiebiger)  
(Representatives Dahl, Delmore)

AN ACT to amend and reenact subsection 5 of section 44-04-18 of the North Dakota Century Code, relating to authority to establish procedures for providing access from an outside location to computer databases or electronically stored information.

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

<sup>153</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 or section 44-04-17.1, may establish procedures for providing access from an outside location to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the ~~entity~~ state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>153</sup> Section 44-04-18 was also amended by section 1 of Senate Bill No. 2172, chapter 384.

**CHAPTER 384****SENATE BILL NO. 2172**

(Senators J. Lee, Dever, Lyson)  
(Representatives DeKrey, Grande, Gruchalla)

AN ACT to amend and reenact subsection 6 of section 44-04-18 and section 44-04-18.3 of the North Dakota Century Code, relating to access to public records in arbitration proceedings and to exempting law enforcement work schedules from open records requirements.

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

<sup>154</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action or, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.

**SECTION 2. AMENDMENT.** Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.**

1. Any telephone number and the home address of a juvenile court supervisor or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. A record containing information relating to an employee of the department of corrections and rehabilitation may be disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as

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<sup>154</sup> Section 44-04-18 was also amended by section 1 of Senate Bill No. 2259, chapter 383.

someone other than a law enforcement officer while engaging in the investigation of a violation of law.

3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 385****SENATE BILL NO. 2322**

(Senators Miller, Nelson, Nodland)

(Representatives Dahl, Kingsbury, Kretschmar)

AN ACT to amend and reenact section 1-08-12, subsection 1 of section 44-06-13.1, and subsection 1 of section 44-06-13.2 of the North Dakota Century Code, relating to electronic signatures and discipline of notaries public.

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

**SECTION 1. AMENDMENT.** Section 1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

**1-08-12. Alternative methods of signing, subscribing, or verifying documents filed by electronic means.** A state agency, as defined in section 44-08-04.2, charged by law with the duty of receiving signed, subscribed, or verified documents may accept such documents filed by electronic means, including telecommunications. The secretary of state ~~shall~~ may adopt rules in the manner provided in chapter 28-32 to govern methods for signing, subscribing, or verifying documents filed by electronic means, except documents filed with the tax commissioner. A signature on a document filed by electronic means which is accepted by the state agency and complies with the rules of the secretary of state has the same validity and consequence as the actual signature and written declaration for a paper document.

**SECTION 2. AMENDMENT.** Subsection 1 of section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A notary public may not notarize a signature on a document if:
  - a. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
  - b. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction or as a signatory to a petition within the meaning of section 1-01-50.
  - c. The signature is that of the notary public or the spouse of the notary public.
  - d. Except as otherwise provided by law, the notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
  - e. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgement is undated.

- f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
- g. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgement or in any other way is impersonating or assuming the identity of another notary.
- h. The signature is on a blank or incomplete document.
- i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
- j. Except as otherwise provided by law:
  - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
  - (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
  - (3) The document is a copy or certified copy of a public record containing an official seal.
- k. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.

**SECTION 3. AMENDMENT.** Subsection 1 of section 44-06-13.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
  - a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
  - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
  - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.
  - d. Engaging in any act prohibited under section 44-06-13.1.
  - e. Violating any other provision of this chapter.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 386****SENATE BILL NO. 2064**  
(Legislative Compensation Commission)

AN ACT to amend and reenact subdivision d of subsection 2 of section 44-08-04, subsections 1, 2, 3, and 7 of section 54-03-20, subsection 1 of section 54-06-09, and section 54-35-10 of the North Dakota Century Code, relating to legislative compensation and state officer and employee lodging and mileage reimbursement; and to provide an effective date.

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

<sup>155</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~fifty five dollars~~ an amount established by policy by the director of the office of management and budget plus any additional applicable state or local taxes. The director shall establish a policy to set the lodging reimbursement at an amount equal to ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

<sup>156</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~thirty five~~ forty-one dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

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<sup>155</sup> Section 44-08-04 was also amended by section 1 of Senate Bill No. 2353, chapter 387.

<sup>156</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

<sup>157</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~forty-one~~ forty-eight dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

<sup>158</sup> **SECTION 4. AMENDMENT.** Subsections 2 and 3 of section 54-03-20 of the North Dakota Century Code are amended and reenacted as follows:

2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a ~~maximum of nine hundred dollars~~ per calendar month the amount established under this subdivision by the director of the office of management and budget for lodging in state, at the rates and in the manner and which may not exceed the rate provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. On August first of each even-numbered year, the director of the office of management and budget shall set the maximum monthly reimbursement for the subsequent two-year period at an amount equal to thirty times fifty-five percent of the daily lodging reimbursement in effect on that date as provided under subdivision d of subsection 2 of section 44-08-04.
- b. Notwithstanding subdivision a:
  - (1) A member of the legislative assembly may elect to be reimbursed for less than the amount to which the legislator is entitled under this subsection by claiming the lesser amount on a voucher submitted with the receipt required by section 44-08-04.
  - (2) The legislative council may establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled under subdivision a.

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<sup>157</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

<sup>158</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

3. a. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle.
- b. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed ~~nine hundred dollars per month~~ the maximum monthly reimbursement allowed under subdivision a of subsection 2.

<sup>159</sup> **SECTION 5. AMENDMENT.** Subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of three hundred ~~seventy-eight ninety-six~~ dollars a month, ~~which is payable every six months or~~ paid monthly; at the member's option.
- b. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.
- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred seventy dollars per month during the biennium for their execution of public duties.

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<sup>159</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

<sup>160</sup> **SECTION 6. AMENDMENT.** Subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of ~~three~~ four hundred ~~ninety-six~~ fifteen dollars a month, ~~which is payable every six months or~~ paid monthly; ~~at the member's option.~~
- b. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.
- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred seventy dollars per month during the biennium for their execution of public duties.

**SECTION 7. AMENDMENT.** Subsection 1 of section 54-06-09 of the North Dakota Century Code is amended and reenacted as follows:

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense ~~the following amounts:~~
  - a. ~~The sum of forty-five cents per mile [1.64 kilometers] for each mile [1.64 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle, the use of which is required by the employing entity. The sum of seventy cents per mile [1.64 kilometers] for~~ For each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane, the individual is entitled to a sum equal to one and one-half times the mileage reimbursement amount established under subdivision c for travel by motor vehicle. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:

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<sup>160</sup> Section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, and section 5 of Senate Bill No. 2064, chapter 386.

- (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per mile basis as provided in this subsection.
  - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.
- b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the individual is entitled to reimbursement for the amount actually and necessarily expended therefor in the performance of official duties.
- c. The director of the office of management and budget shall adopt rules establishing mileage reimbursement for actual and necessary travel in the performance of official duty when the travel is by motor vehicle, the use of which is required by the employing entity. The director shall amend the rules when necessary to set reimbursement at the same rate as established by the United States general services administration for privately owned vehicles.

<sup>161</sup> **SECTION 8. AMENDMENT.** Section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-10. (Effective through June 30, 2009) Compensation of members and leadership.**

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred eight dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the council shall receive an additional five dollars for each day spent in attendance at sessions of the council and of its committees, and the chairman of each of the council's committees shall receive five dollars for each day spent in attendance at sessions of the council or of the committee which the person chairs.

**(Effective after June 30, 2009) Compensation of members and leadership.**

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<sup>161</sup> Section 54-35-10 was also amended by section 65 of House Bill No. 1436, chapter 482, and section 9 of Senate Bill No. 2064, chapter 386.

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred ~~thirty-five~~ forty-one dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the council shall receive an additional five dollars for each day spent in attendance at sessions of the council and of its committees, and the chairman of each of the council's committees shall receive five dollars for each day spent in attendance at sessions of the council or of the committee which the person chairs.

<sup>162</sup> **SECTION 9. AMENDMENT.** Section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-10. Compensation of members and leadership.**

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred ~~forty-one~~ forty-eight dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the council shall receive an additional five dollars for each day spent in attendance at sessions of the council and of its committees, and the chairman of each of the council's committees shall receive five dollars for each day spent in attendance at sessions of the council or of the committee which the person chairs.

**SECTION 10. EFFECTIVE DATE.** Sections 2, 5, and 8 of this Act become effective July 1, 2009, section 1 of this Act becomes effective on August 1, 2009, and sections 3, 6, and 9 of this Act become effective on July 1, 2010.

Approved May 1, 2009  
Filed May 5, 2009

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<sup>162</sup> Section 54-35-10 was also amended by section 65 of House Bill No. 1436, chapter 482, and section 8 of Senate Bill No. 2064, chapter 386.

**CHAPTER 387****SENATE BILL NO. 2353**

(Senators Krebsbach, Wardner)  
(Representatives Boehning, D. Johnson, S. Kelsh)

AN ACT to amend and reenact subdivision d of subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to state officer and employee lodging reimbursement.

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

<sup>163</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~fifty five dollars~~ an amount established by policy by the director of the office of management and budget. The director shall establish a policy to set the lodging reimbursement at an amount not to exceed ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>163</sup> Section 44-08-04 was also amended by section 1 of Senate Bill No. 2064, chapter 386.

**CHAPTER 388****HOUSE BILL NO. 1162**

(Representatives Clark, Thoreson, Amerman)  
(Senators Flakoll, Cook, Dever)

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to restrictions on the purchase of flags of the United States of America.

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

**SECTION 1.** A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

**Purchase of flags of the United States.** A state entity or any political subdivision of this state may not purchase a flag of the United States of America unless the flag was manufactured in the United States of America. This section does not apply to the purchase of an item that is not a flag but which portrays a likeness of a flag of the United States of America, such as food, clothing, a lapel pin, a paper product, or other non-flag item.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 389****HOUSE BILL NO. 1369**

(Representatives Skarphol, Wall, Williams)  
(Senator Anderson)

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to the removal of appointed political subdivision officers; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

**Removal of political subdivision officer.** Notwithstanding any other provision of law, the governing body of a political subdivision may remove from office any individual the governing body has appointed to any office, board, or commission, for misconduct, malfeasance, crime in office, or neglect of duty or for habitual drunkenness or gross incompetence, after notice and opportunity for a hearing.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 13, 2009  
Filed March 13, 2009

# PROPERTY

## CHAPTER 390

### SENATE BILL NO. 2235

(Senators Holmberg, Hogue)

AN ACT to create and enact a new section to chapter 47-04.1 of the North Dakota Century Code, relating to lender approval of amendment of condominium rules.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 47-04.1 of the North Dakota Century Code is created and enacted as follows:

**Approval by lender of amendment.** Notwithstanding any requirement in the condominium declaration or bylaws requiring a lender's approval of any amendment of the declaration or bylaws, after being given a thirty-day written notice beginning with the date of mailing, any lender contacted at the last-known address that does not refuse or approve of the proposed amendment is deemed to have approved the amendment. This section does not apply to any proposed amendment that affects a lender's right to enforce the terms of the mortgage.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 391****HOUSE BILL NO. 1045**

(Legislative Council)  
(Natural Resources Committee)

AN ACT to amend and reenact section 47-05-01, subsection 1 of section 47-05-02, and section 47-05-17 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate.

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

**SECTION 1. AMENDMENT.** Section 47-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-05-01. Easements attached to other lands.** The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. ~~The right of taking game.~~
4. The right of way.
- ~~5.~~ 4. The right of taking water, wood, minerals, and other things.
- ~~6.~~ 5. The right of transacting business upon land.
- ~~7.~~ 6. The right of conducting lawful sports upon land.
- ~~8.~~ 7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
- ~~9.~~ 8. The right of receiving water from or discharging the same upon land.
- ~~10.~~ 9. The right of flooding land.
- ~~11.~~ 10. The right of having water flow without diminution or disturbance of any kind.
- ~~12.~~ 11. The right of using a wall as a party wall.
- ~~13.~~ 12. The right of receiving more than natural support from adjacent land or things affixed thereto.
- ~~14.~~ 13. The right of having the whole of a division fence maintained by a coterminous owner.
- ~~15.~~ 14. The right of having public conveyances stopped or of stopping the same on land.

- ~~46.~~ 15. The right of a seat in church.
- ~~47.~~ 16. The right of burial.

**SECTION 2. AMENDMENT.** Subsection 1 of section 47-05-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The right to pasture, and of fishing ~~and taking game~~.

**SECTION 3. AMENDMENT.** Section 47-05-17 of the North Dakota Century Code is amended and reenacted as follows:

**47-05-17. (~~Effective through July 31, 2009~~) Severance of the right of access for hunting access prohibited.** The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before August 1, 2007.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 392****SENATE BILL NO. 2236**  
(Senators Holmberg, Hogue)

AN ACT to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to the power of a trustee to transfer property.

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

**SECTION 1.** A new section to chapter 47-10 of the North Dakota Century Code is created and enacted as follows:

**Authority of trustee.** The trustee of a trust that holds title to real property is presumed to have the power to sell, convey, and encumber the real property unless restrictions on that power appear in the records of the county recorder.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 393****HOUSE BILL NO. 1156**

(Judiciary Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact subsection 2 of section 47-16-07.1 and section 47-30.1-08 of the North Dakota Century Code, relating to reporting security deposits under the Uniform Unclaimed Property Act.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 47-16-07.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
  - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or the lessee's guest.
  - b. Any unpaid rent.
  - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of any portion of a security deposit not paid to the lessee upon termination of the lease must be itemized by the lessor. Such itemization together with the amount due must be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice must contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration. Any amounts not claimed from the lessor by the lessee within one year of the termination of the lease agreement are subject to the reporting requirements of section 47-30.1-08.

**SECTION 2. AMENDMENT.** Section 47-30.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-08. Deposits held by utilities Security deposits.** A deposit, including any interest thereon, made in advance by a ~~subscriber with a utility person~~ to secure ~~payment or any sum paid in advance for utility services to be furnished an~~ agreement for rights or services, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services agreement for which the deposit or advance payment was made, is presumed abandoned.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 394****SENATE BILL NO. 2171**

(Senators J. Lee, Fischer, Lyson)  
(Representatives Delmore, Grande, Gruchalla)

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to the termination of a residential lease by a victim of domestic violence.

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

**SECTION 1.** A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

**Termination due to domestic abuse.**

1. A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.
2. The tenant must provide advance written notice to the landlord stating that the tenant fears imminent domestic violence from a person named in a protection order after a hearing under section 14-07.1-02 or an order prohibiting contact, the tenant needs to terminate the tenancy, and the specific date the tenancy will terminate. The notice must be delivered by mail, facsimile communication, or in person before the termination of the tenancy, and be accompanied by the protection order or the order prohibiting contact.
3. A landlord may not disclose information provided to the landlord by a tenant documenting domestic violence under this section. The information may not be entered into any shared data base or provided to any person, but may be used as evidence in an eviction proceeding, in a claim for unpaid rent or damages arising out of the tenancy, or as otherwise required by law.
4. A tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate. The tenant is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section.
5. This section does not affect a tenant's liability for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated by the tenant under this section.
6. The tenancy terminates, including the right of possession of the premises, on the termination date stated in the notice under subsection 2. The amount equal to one month's rent must be paid on or before the

termination of the tenancy for the tenant to be relieved of the contractual obligations for the remaining term of the lease as provided in this section.

7. For purposes of this section, timing for the payment of the lessee's security deposit under section 47-16-07.1 is triggered by either of the following:
  - a. If the only tenant, including the tenant's minor children, is the tenant who is the victim of domestic violence, upon the first day of the month following the date the tenant vacates the premises.
  - b. If there are additional tenants bound by the lease, upon the expiration of the lease.
8. Notwithstanding the release of a tenant from a lease agreement under this section, the tenancy continues for any remaining tenants.
9. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 395****SENATE BILL NO. 2176**

(Senators J. Lee, Fischer, Flakoll)  
(Representatives Hawken, Keiser, Potter)

AN ACT to amend and reenact section 47-16-18 of the North Dakota Century Code, relating to the termination of a lease by death.

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

**SECTION 1. AMENDMENT.** Section 47-16-18 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-18. When lease of real property is terminated by death.** Only ~~when~~ ~~the~~ a lease of real property which is terminable at the pleasure of one of the parties to the contract is terminated by the notice to one party of the death or incapacity of the other party to contract. Upon the death of a lessee of real property for residential purposes, however, and at the option of any surviving lessee or of the estate of the decedent, the lease terminates on the last day of the month in the month following the death of the lessee unless the lease term expires before that time.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 396****SENATE BILL NO. 2234**  
(Senators Holmberg, Hogue)

AN ACT to amend and reenact section 47-19-02 of the North Dakota Century Code, relating to recording instruments without acknowledgement.

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

**SECTION 1. AMENDMENT.** Section 47-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**47-19-02. Instruments entitled to record without acknowledgment.** The following instruments may be recorded without acknowledgment or further proof:

1. Any judgment affecting the title to or the possession of real property authenticated by the certificate of the clerk of the court in which such judgment is rendered.
2. Any letters patent from the United States.
3. Any duplicate final register's receipt.
4. A certificate from the United States land office.
5. A contract between the state and a purchaser of school and institutional lands for the purchase and sale of such lands.
6. An assignment of any such contract when such assignment has been approved by the board of university and school lands.
7. Any certified copy of a patent or of a duplicate final register's receipt or certificate when certified and proved according to the laws of the United States and of this state in such manner as to entitle it to admission as evidence in the courts of this state, and when so recorded, it shall be notice in like manner and to the same extent as the originals thereof would have been if the same had been recorded.
8. Any affidavit made as is provided in section 47-19-12.
9. A certified copy of an order of a district court relating to estate tax determinations.
10. A statement of the state tax commissioner relating to estate tax determination.
11. A certified copy of discharge of bankrupt.
12. A financing statement as defined in section 41-09-02.

13. All instruments issued by the United States, or any agency, bureau, or department thereof and the state of North Dakota and all political subdivisions thereof which affect the title to real property.
  1. An instrument issued by an agency, bureau, department, or the judiciary of the United States, this state or a political subdivision of this state, or an Indian tribe recognized by the United States department of the interior. An instrument includes a contract or agreement that is entered by one of these governmental entities that contract or agreement is deemed to have been issued by the entity.
  2. An instrument certified by an agency, bureau, department, or the judiciary of the United States or a foreign government, a state of the United States or a political subdivision of a state, or an Indian tribe recognized by the United States department of the interior.
  3. A lis pendens or other instrument that is signed by an attorney at law licensed to practice law in this state which bears the attorney's identification number issued by the state board of law examiners.
  4. An affidavit that bears a jurat or verification upon oath or affirmation.
  5. A Uniform Commercial Code financing statement under title 41.
  6. A plat signed by a land surveyor registered in this state.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 397****SENATE BILL NO. 2233**

(Senator Holmberg)

AN ACT to create and enact two new sections to chapter 47-19 of the North Dakota Century Code, relating to recording of change of name or identity of mortgagee and the assignment, satisfaction, release, or authorization of foreclosure by a mortgagee; and to provide for retroactive application.

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

**SECTION 1.** Two new sections to chapter 47-19 of the North Dakota Century Code are created and enacted as follows:

**Corporate change noted in assignment, satisfaction, or release.** When a change in the name or identity of a corporate mortgagee or assignee of the mortgagee is caused by or results from a merger, consolidation, amendment to charter or articles of incorporation, or conversion of articles of incorporation or charter from federal to state, from state to federal, or from one form of entity to another, a mortgage assignment, satisfaction, or release that is otherwise recordable and that specifies in the body of the instrument the merger, consolidation, amendment, or conversion event causing the change in name or identity is in recordable form. The assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder without further evidence of corporate merger, consolidation, amendment, or conversion. For purposes of assigning, satisfying, or releasing the mortgage, the assignment, satisfaction, or release is prima facie evidence of the facts stated in it with respect to the corporate merger, consolidation, amendment, or conversion, and the county recorder shall rely upon it to assign, satisfy, or release the mortgage.

**Authority of mortgagee designated as nominee or agent - Retroactive application.**

1. An assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder and is sufficient to assign, satisfy, or release a mortgage if:
  - a. A mortgage is granted to a mortgagee as nominee or agent for a third party identified in the mortgage, and the third party's successors and assigns;
  - b. A subsequent assignment, satisfaction, or release of the mortgage is executed by the mortgagee or the third party, its successors or assigns; and
  - c. The assignment, satisfaction, or release is in recordable form.
2. The county recorder shall rely upon the recorded assignment, satisfaction, or release in subsection 1 to assign, satisfy, or release the mortgage.

3. This section applies to any mortgage assignment, satisfaction, or release executed, recorded, or filed before, on, or after August 1, 2009.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 398****HOUSE BILL NO. 1232**  
(Representatives N. Johnson, Vigesaa)  
(Senators Lyson, Nething)

AN ACT to amend and reenact section 47-24.1-10 of the North Dakota Century Code, relating to custodianships for property of minors.

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

**SECTION 1. AMENDMENT.** Section 47-24.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**47-24.1-10. Single custodianship.** A transfer may be made only for one minor and ~~only one person~~ up to two persons may be ~~the custodian~~ joint custodians. All custodial property held under this chapter by the same custodian or joint custodians for the benefit of the same minor constitutes a single custodianship. Unless otherwise specified in a document creating the custodial property, each joint custodian may act alone with respect to the custodial property. If either joint custodian resigns, dies, becomes incapacitated, or is removed, then the remaining joint custodian becomes sole custodian.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 399****SENATE BILL NO. 2282**

(Senators Olafson, J. Lee)  
(Representative Dahl)

AN ACT to create and enact a new section to chapter 47-25 of the North Dakota Century Code, relating to use of trade names by franchisees; and to amend and reenact sections 47-25-06.1 and 47-25-07 of the North Dakota Century Code, relating to amendments and cancellation of trade name registrations.

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

**SECTION 1.** A new section to chapter 47-25 of the North Dakota Century Code is created and enacted as follows:

**Certain use of trade names by franchisees restricted.**

1. Except as provided in section 47-25-03, an individual or organization that is a franchisee may not register a licensed trade name under this chapter. If the licensed trade name is not registered as provided in this chapter, the franchisee may not use the trade name in this state until the franchisee has provided the following disclosure information to the secretary of state on a form prescribed by the secretary of state for that purpose:
  - a. The true and full name and business address of the franchisee;
  - b. The complete trade name licensed to the franchisee;
  - c. The address of each place of business in this state where the franchisee will use or display the unregistered trade name;
  - d. The name and address of the franchiser or other licensor of the trade name; and
  - e. Any other information that the secretary of state may reasonably request to identify or contact the franchisee.

The disclosure filing required under this subsection is subject to the same filing fee and renewal requirements as provided in section 47-25-04 for trade name registrations.

2. A trade name licensed to a franchisee that is not registered under the provisions of this chapter is not entitled to any trade name protection provided by this chapter.

**SECTION 2. AMENDMENT.** Section 47-25-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-06.1. Change of name or address of registrant - Other amendments.** Any registrant that effects a name change must record that name

change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of twenty-five dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual;
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota; or
3. An amendment or application for amended certificate of authority for a registrant that is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

A registrant may submit an amendment to a trade name registration on a form prescribed by the secretary of state to show any change in the nature of the business or in the purpose of the registration. The secretary of state shall amend the registration upon receipt of the completed form and payment of a fee of twenty-five dollars by the registrant.

**SECTION 3. AMENDMENT.** Section 47-25-07 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-07. Cancellation.** The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state receives a voluntary written and signed request for cancellation from the registrant or the assignee of record. In the case of a registrant who is a deceased individual, the request for cancellation may be made by the personal representative of the registrant's estate.
2. Any registration concerning which a state district court finds any of the following:
  - a. That the registered trade name has been abandoned.
  - b. That the registrant is not the owner of the trade name.
  - c. That the registration was granted improperly.
  - d. That the registration was obtained fraudulently.

- e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.
3. Any registration a district court orders canceled on any grounds.
4. Any trade name when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 400****HOUSE BILL NO. 1137**

(Education Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact section 47-30.1-35 of the North Dakota Century Code, relating to locater agreement requirements under the Uniform Unclaimed Property Act.

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

**SECTION 1. AMENDMENT.** Section 47-30.1-35 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-35. Agreement Agreements to locate reported and unreported property.**

1. All agreements to pay compensation to recover or assist in the recovery of property reported under section 47-30.1-17, made within twenty-four months after the date payment or delivery is made to the administrator, are unenforceable.
2. An agreement entered into after such twenty-four-month period is enforceable only if the agreement is in writing and the aggregate fee, compensation, or commission charged is not in excess of ten percent of the amount recovered.
3. An agreement entered into on or after August 1, 2009, with an owner under which the owner is to pay a fee for locating, delivering, recovering, or assisting in the recovery of property that has not yet been reported to the unclaimed property office under chapter 47-30.1 is enforceable only if the agreement:
  - a. Is in writing;
  - b. Sets forth the nature of the property for which recovery is sought;
  - c. Describes the services to be rendered in connection with locating, delivering, recovering, or assisting in the recovery of the property;
  - d. States the value of the property;
  - e. Sets forth or describes the amount of the fee;
  - f. Is signed by the apparent owner;
  - g. Discloses that, absent the agreement, the property would otherwise be delivered to a state-administered unclaimed property program for safekeeping on the owner's behalf and that upon such delivery, the owner may be able to recover the property from the state-administered program without charge; and

- h. Provides the apparent owner with contact information for the state-administered unclaimed property program to which the property would otherwise be reported.
- 4. Nothing in this section may be construed to prevent an owner from asserting at any time that an agreement to locate, deliver, recover, or assist in the recovery of property is based upon excessive or unjust consideration.

Approved March 19, 2009

Filed March 24, 2009

**CHAPTER 401****SENATE BILL NO. 2139**

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to ownership of subsurface pore space; to provide for application; and to declare an emergency.

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

**SECTION 1.** A new chapter to title 47 of the North Dakota Century Code is created and enacted as follows:

**Policy.** Undivided estates in land and clarity in land titles reduce litigation, enhance comprehensive management, and promote the security and stability useful for economic development, environmental protection, and government operations.

**Pore space defined.** In this chapter "pore space" means a cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.

**Title to pore space.** Title to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.

**Conveyance of real property conveys pore space.** A conveyance of title to the surface of real property conveys the pore space in all strata underlying the surface of the real property.

**Severing pore space prohibited.** Title to pore space may not be severed from title to the surface of the real property overlying the pore space. An instrument or arrangement that seeks to sever title to pore space from title to the surface is void as to the severance of the pore space from the surface interest.

**Transactions allowed.** Leasing pore space is not a severance prohibited by this chapter.

**Application.** This chapter does not affect transactions before the effective date of this chapter that severed pore space from title to the surface estate.

**Mineral and pore space estates - Relationship.** In the relationship between a severed mineral owner and a pore space estate, this chapter does not change or alter the common law as of the effective date of this chapter as it relates to the rights belonging to, or the dominance of, the mineral estate.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009  
Filed April 9, 2009

# PUBLIC UTILITIES

## CHAPTER 402

### SENATE BILL NO. 2132

(Government and Veterans Affairs Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-01-02 of the North Dakota Century Code, relating to the election of one public service commissioner as chairman of the commission.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-02. Public service commission - How constituted.** The three persons elected public service commissioners, pursuant to the provisions of article V, section 2, of the Constitution of North Dakota, constitute and shall be known and designated as the public service commission of the state of North Dakota. They shall elect one of their number ~~president~~ chairman of the commission and shall appoint a secretary.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 403****SENATE BILL NO. 2137**

(Natural Resources Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 6 of section 49-02-02 and sections 49-05-04, 49-05-04.2, 49-05-04.3, and 49-05-16 of the North Dakota Century Code, relating to powers of the public service commission and electric and gas public utility application fees; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on ~~rate increase~~ applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must ~~upon the order of the commission~~ be deducted from the application fee paid by the public utility involved. The commission shall ascertain the costs and expenditures. ~~After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility.~~ The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected The application fees received by the commission under this subsection chapter 49-05 must be deposited in a special account within the public service commission. All moneys deposited in the account are appropriated on a continuing basis to the commission to pay expenses incurred in the processing of cases in which application fees are required. The commission shall refund the portion of a fee collected under chapter 49-05 which exceeds the expenses incurred for processing the case for which the fee was paid.

**SECTION 2. AMENDMENT.** Section 49-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04. Application for increase of rates - Information required - Fee.** Any public utility requesting an increase in its rates above the maximum approved or prescribed by the commission shall furnish the commission:

1. The original cost of all its property.

2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.
6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the commission shall ask to have produced as evidence at the hearing.
11. An application fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission shall pay the expenses of investigating a rate increase application under this section from the application fee paid by the public utility in accordance with section 49-02-02. The commission may waive or reduce the fee.

**SECTION 3. AMENDMENT.** Section 49-05-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04.2. Rate adjustment - Federal environmental mandate costs.**

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
  - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
  - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.

- c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
  - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
- a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
  - b. A schedule for implementation of the applicable projects; ~~and~~
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
  - d. An application fee in the amount of fifty thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. ~~The commission may order shall pay~~ the expenses of investigating ~~a rate adjustments adjustment~~ to meet federal environmental mandates under this section ~~be from the application fee~~ paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.

**SECTION 4. AMENDMENT.** Section 49-05-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04.3. Rate adjustment - Transmission facility costs.**

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally

regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:

- a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
  - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
  - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
  - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
- a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
  - b. A schedule for implementation of the applicable transmission facility projects; ~~and~~
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
  - d. An application fee in the amount of fifty thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission ~~may order the public utility to~~ shall pay the expenses of investigating a rate adjustment ~~adjustment~~ for recovery of transmission facility costs under this section from the application fee paid by the public utility in accordance with section 49-02-02.

**SECTION 5. AMENDMENT.** Section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-16. Advance determination of prudence.** A public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric

service to its customers may file an application with the commission for an advance determination of prudence regarding the proposal. The commission ~~may order that shall pay the~~ expenses associated with investigating the application made by the public utility for prudence of a resource addition ~~be~~ from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of an electric resource addition if:
  - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
  - b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
  - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
  - ~~e.~~ d. The commission determines that the resource addition is reasonable and prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is reasonable and prudent, shall consider the benefits of having the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.
3. A resource addition approved by the commission is subject to annual reporting requirements until commercial operation of the resource addition.
4. The commission's order determining prudence of the resource adjustment is binding for ratemaking purposes.
5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.

6. There is a rebuttable presumption that an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is located in the state is prudent.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 404

### HOUSE BILL NO. 1449 (Representative DeKrey)

AN ACT to amend and reenact section 49-02-27 and subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the decommissioning of wind energy conversion facilities and to the definition of energy conversion facility; and to provide for a legislative council study of the development of wind and other natural resources.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-27. Power of commission to establish rules to decommission Decommissioning of wind energy conversion facilities.**

1. The commission ~~may~~ shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules ~~may~~ must address:
  - 1- a. The anticipated life of the project;
  - 2- b. The estimated decommissioning costs in current dollars;
  - 3- c. The method and schedule for updating the costs of the decommissioning and restoration;
  - 4- d. The method of ensuring that funds will be available for decommissioning and restoration; ~~and~~
  - 5- e. The anticipated manner in which the project will be decommissioned and the site restored; and
  - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.

<sup>164</sup> **SECTION 2. AMENDMENT.** Subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. Generation ~~of one hundred thousand kilowatts or more~~ exceeding sixty megawatts of electricity;

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<sup>164</sup> Section 49-22-03 was also amended by section 1 of House Bill No. 1032, chapter 406.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES.** During the 2009-10 interim, the legislative council shall study the development of wind resources and other natural resources in the same location. The study must include a review of laws relating to the siting and decommissioning of wind energy conversion facilities, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 405****HOUSE BILL NO. 1342**

(Representatives Weisz, DeKrey, Delmore, R. Kelsch)  
(Senators Cook, Fiebiger)

AN ACT to create and enact a new section to chapters 49-10 and 49-11 of the North Dakota Century Code, relating to public and private railroad crossings; to amend and reenact sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to warning devices at railroad crossings; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 49-10 of the North Dakota Century Code is created and enacted as follows:

**Railroad crossing determination.** If a dispute arises as to whether a railroad grade crossing should be classified as public or private as defined in section 2 of this Act, the railroad corporation, governmental entity, or private property owner may file with the commission a petition and the commission shall determine whether the crossing is public or private.

**SECTION 2.** A new section to chapter 49-11 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter, unless the context otherwise requires:

1. "Public railroad crossing" means a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. The term includes a crossing if a public authority maintains the roadway on both sides of the crossing.
2. "Private railroad crossing" means any railroad at grade crossing of a roadway which is not a public railroad crossing.

**SECTION 3. AMENDMENT.** Section 49-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**49-11-21. Warning device sounded at crossing by locomotive - Exception Exceptions.**

1. A warning device must be placed on each locomotive engine and the device on the lead locomotive must be sounded at a distance of at least eighty rods [402-34 meters] from the place where the railroad crosses any other road or street when approaching a public railroad crossing, and must continue to be sounded until it has crossed the road or street locomotive enters the public railroad crossing.
2. The warning device may not be sounded at a private railroad crossing. However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on

the safety concerns of the public. A party may not be subject to any liability as a result of not making a request.

3. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions.
4. A crew member may sound a warning device as determined appropriate by that crew member. Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage.

**SECTION 4. AMENDMENT.** Section 49-11-22 of the North Dakota Century Code is amended and reenacted as follows:

**49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing.**

1. A person railroad that owns or has a leasehold interest in has operational control of a locomotive that fails to sound its warning device at any road or street crossing as required by section 49-11-21 is guilty of an infraction and is liable for all damages that are sustained by any person by reason of the neglect.
2. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance not required, any crew member or person railroad with any interest in operational control of the locomotive is may not be liable for any damages sustained by a person by reason of the failure to sound a warning device.
3. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on January 1, 2010.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 406****HOUSE BILL NO. 1032**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsections 3 and 12 of section 49-22-03 of the North Dakota Century Code, relating to the energy conversion and transmission facility siting definitions.

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

<sup>165</sup> **SECTION 1. AMENDMENT.** Subsections 3 and 12 of section 49-22-03 of the North Dakota Century Code are amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities ~~incident~~:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are within the boundaries of:
      - (a) A previously issued certificate or permit;
      - (b) For an energy conversion facility constructed before April 9, 1975, the geographic location on which the facility was built; or
      - (c) For a transmission facility constructed before April 9, 1975, a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area; and
    - (3) Before conducting any activities, the utility certifies in writing to the commission that the activities will not affect any known exclusion or avoidance area and the utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
  - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:

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<sup>165</sup> Section 49-22-03 was also amended by section 2 of House Bill No. 1449, chapter 404.

- (1) Certifies in writing to the commission that:
    - (a) The activities will not affect any known exclusion area; and
    - (b) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
  - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
12. "Transmission facility" means any of the following:
- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include a:
    - (1) A temporary transmission line loop that is:
      - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
      - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
      - (c) Less In place for less than one year; or
    - (2) A transmission line that is less than one mile [1.61 kilometers] long; and
    - (4) In place for less than one year.
  - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to a:
    - (1) An oil or gas pipeline gathering system;

- (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will be not trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
- (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

Approved April 21, 2009  
Filed April 22, 2009

# PUBLIC WELFARE

## CHAPTER 407

### HOUSE BILL NO. 1214

(Representatives Kingsbury, Kilichowski)  
(Senator Miller)

AN ACT to authorize the department of human services to convey certain land in Walsh County, North Dakota.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Transfer of land authorized.** The state of North Dakota by and through the department of human services may convey the land described in this section to the Grafton park board, for the price and on the terms as determined by the department of human services. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The land to be conveyed is a part of the grounds of the developmental center at westwood park, Grafton, described as follows:

1. A parcel of land approximately 5.19 acres, more or less, located in Lot One (1), Block One (1), of the State School Second Addition, Grafton, Walsh County, North Dakota, described more particularly as follows:

Beginning at the Southeast corner of Lot One (1); thence North along the Eastern line of Lot One (1), a distance of 400 feet, more or less, to a point; thence West a distance of 150 feet, more or less, to a point; thence North a distance of 200 feet, more or less, to a point being the Northeast corner of Lot One (1); thence West a distance of 277.40 feet; thence South a distance of 600 feet, more or less, to a point of intersection with the South line of Lot One (1), Block One (1); thence East 427.40 feet, more or less, to the point of beginning. Above tract contains 5.19 acres, more or less.

2. A parcel of land, located in Lot 2, Block 1, State School Second Addition to the City of Grafton, more accurately described as follows.

Commencing at the southeast corner of Lot 2, Block 1, State School Second Addition to the City of Grafton, North Dakota; thence West, along the South line of said Lot 2, on an assumed bearing of N 89° 34' 17" W, a distance of 277.40 feet; thence N 0° 18' 13" E, and parallel to the west line of said Lot 2, a distance of 1,150.00 feet, to a point where said line intersects the centerline of the Park River; thence in a southeasterly direction, a distance of 616 feet, more or less, along said centerline of the Park River, to a point on the East line of said Lot 2; thence South, along the East line of said Lot 2, a distance of 600 feet, more or less, to the Point of Beginning.

Said parcel of land contains 5.57 acres, more or less.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 408****HOUSE BILL NO. 1327**

(Representatives Weisz, DeKrey)  
(Senator Klein)

AN ACT to provide for the remodeling of a nursing facility to meet the requirements of assisted living and basic care and a pilot project on assisted living rent subsidies; and to provide an appropriation.

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

**SECTION 1. REMODELING OF A NURSING FACILITY TO MEET THE REQUIREMENTS OF ASSISTED LIVING AND BASIC CARE - PILOT PROJECT ON ASSISTED LIVING RENT SUBSIDIES.** Before March 1, 2010, the department of human services shall grant \$200,000 to a facility under section 23-16-01.1 which incurs a transfer of the location of all the facility's beds and a change of operator before June 1, 2009, for costs associated with the remodeling of the facility. In order to receive a grant, a facility shall agree to:

1. Meet the requirements of both an assisted living facility and a basic care facility;
2. Use at least \$50,000 of the grant to conduct a rent subsidy pilot project for at least four assisted living residents; and
3. Report to the department of human services on the success of the rent subsidy pilot project compared to the basic care assistance program.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the health care trust fund, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing a grant as provided for in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of human services may not spend this funding prior to January 1, 2010.

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 409****HOUSE BILL NO. 1556**

(Representatives Wieland, Kerzman, Pollert)  
(Senators Fischer, Flakoll, Robinson)

AN ACT to provide for a study by the department of human services of rates for public and private licensed developmental disability providers; and to provide an appropriation.

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

**SECTION 1. STUDY - RATE STRUCTURE OF DEVELOPMENTAL DISABILITY PROVIDERS.** During the 2009-10 interim, the department of human services shall contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse public and private, licensed developmental disability ICF/MR and home and community-based services providers serving ICF/MR medically fragile and behaviorally challenged individuals who meet the definitions established by the Oregon scoring criteria used by the department to assess levels of medical and behavioral severity in children and other recognized scoring criteria used to score adult severity. The study must address reimbursement adequacy and equitability and fairness of reimbursement rates among such providers, the level of medical and supportive services required by providers to adequately serve individuals in those categories, the varying levels of medical and behavioral complexity of individuals requiring services by the providers, and any other analytical comparisons bearing upon issues of reimbursement adequacy, fairness, and equitability to such providers. In obtaining data and arriving at outcomes and recommendations, the study must include consultations with those providers furnishing services to such individuals. Before September 1, 2010, the department shall report the outcomes and recommendations of this study to the legislative council.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of conducting the study required in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 410****HOUSE BILL NO. 1540**

(Representatives Vigessaa, Boe, Kerzman)  
(Senators Andrist, Warner)

AN ACT to amend and reenact subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code, relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which ~~more than twenty percent of the caseload for these programs consists of people who reside on a~~ the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation ~~or property tax-exempt tribal trust lands is ten percent or more.~~ The reimbursement must be such that:
  - a. An affected county's ~~expenses~~ actual direct costs and indirect costs allocated based on a percentage of each county's direct economic assistance and social services costs for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at one hundred percent the percentage of that county's average total supplemental nutrition assistance program caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed ninety percent;
  - b. ~~Each calendar year the~~ The affected counties will receive quarterly allocations payments based on the actual county expenses direct and indirect costs, as provided in subdivision a, for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 67-13-07 available on that date state fiscal year; and
  - c. At the end of each fiscal year the actual quarterly payments paid must be reconciled to the current year of calculation of actual direct and indirect costs as provided in subdivision a and supplemental nutrition assistance program caseload and counties must be compensated accordingly in the first quarter of the new fiscal year; and

- e. d. The reimbursement will be calculated for each county and reported to the county social service board prior to ~~August~~ September first of the year ~~preceding the allocation.~~

**SECTION 2. APPROPRIATION.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$549,938, or so much of the sum as may be necessary, to the department of human services for the purpose of reimbursing the expenses of locally administered economic assistance programs in counties that contain federally recognized Indian reservation land, for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. Each affected county shall reduce that county's human services budget by the amount saved by the implementation of section 1 of this Act and shall publish the property tax savings in that county's official newspaper.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2010.

Approved May 4, 2009  
Filed May 5, 2009

**CHAPTER 411****HOUSE BILL NO. 1144**

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-06-15 of the North Dakota Century Code, relating to confidentiality of information contained in records.

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

**SECTION 1. AMENDMENT.** Section 50-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-15. Confidentiality of information contained in records - Penalty.**

1. Individually identifiable information concerning an individual applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department is confidential, except that any such information, including an individual's social security number, may be used and disclosed:
  - a. In the administration of any such program;
  - b. In accordance with a program's participation in the department's master client index data matching system, unless prohibited by federal law;
  - c. As specifically authorized by the rules of the department; or
  - e. d. As permitted or required by other law.
2. A vendor, agent, or contractor of the department must agree to maintain the confidentiality of individually identifiable information disclosed to that person by the department or by any individual applying for or receiving assistance or services and may use and disclose confidential information only to the extent that person's agreement with the department permits the use and disclosure of any such information.
3. As used in this section, "individually identifiable information" means information, including an individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, as well as demographic information collected from an individual, that:
  - a. Is created or received by the department; and
  - b. Relates to the past, present, or future assistance or services applied for or received by an individual under any program administered by or under the supervision and direction of the department that identifies the individual or with respect to which

there is a reasonable basis to believe the information can be used to identify the individual.

4. Any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information in violation of this section is subject to the penalty provided in section 12.1-13-01.

Approved March 5, 2009  
Filed March 5, 2009

**CHAPTER 412****SENATE BILL NO. 2391**

(Senators Krauter, Erbele, J. Lee)

(Representatives Kerzman, Koppelman, Weisz)

AN ACT to amend and reenact section 50-06-26 of the North Dakota Century Code, relating to the alternatives-to-abortion services program; to provide for reports to the legislative council; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 50-06-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-26. Alternatives-to-abortion services program.** The department of human services shall disburse funds available through title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] to nongovernmental entities that provide alternatives-to-abortion services and expend funds to inform the public about this program. The services must be outcome-based with positive outcome-based results. The department, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, shall contract to inform the public about this program. For purposes of this section, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

**SECTION 2. REPORT TO LEGISLATIVE COUNCIL.** During the 2009-10 interim, the department of human services shall make annual reports to the legislative council regarding the status of the alternatives-to-abortion services program.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing the alternatives-to-abortion services program, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department shall use this funding to inform the public about the alternatives-to-abortion program. Funding for the alternatives-to-abortion program also is appropriated to the department of human services in House Bill No. 1012.

Approved May 1, 2009

Filed May 5, 2009

**CHAPTER 413****SENATE BILL NO. 2174**

(Senators Heckaman, G. Lee)

(Representative D. Johnson)

AN ACT to provide for the creation of an autism spectrum disorder task force; to amend and reenact sections 23-09.4-01, 23-09.4-02, 23-09.4-03, 23-09.4-04, 23-09.4-05, 23-09.4-06, and 23-09.4-08 of the North Dakota Century Code, relating to residential care for children with autism spectrum disorder; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Autism spectrum disorder task force - Appointment - Duties - Annual reports.**

1. The autism spectrum disorder task force consists of:
  - a. (1) The state health officer, or the officer's designee;
  - (2) The director of the department of human services, or the director's designee;
  - (3) The director of special education, or the director's designee; and
  - (4) The executive director of the protection and advocacy project, or the director's designee; and
- b. The following members appointed by the governor:
  - (1) A pediatrician with expertise in the area of autism spectrum disorder;
  - (2) A psychologist with expertise in the area of autism spectrum disorder;
  - (3) A college of education faculty member with expertise in the area of autism spectrum disorder;
  - (4) A licensed teacher with expertise in the area of autism spectrum disorder;
  - (5) An occupational therapist;
  - (6) A representative of a health insurance company doing business in this state;
  - (7) A representative of a licensed residential care facility for individuals with autism spectrum disorder;
  - (8) A parent of a child with autism spectrum disorder;

- (9) A family member of an adult with autism spectrum disorder; and
- (10) A member of the legislative assembly.
2. The director of the department of human services, or the director's designee, shall serve as the chairman. The task force shall meet at the call of the chairman, at least quarterly.
3. The task force shall examine early intervention services, family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.
4. The task force shall develop a state autism spectrum disorder plan and present the plan to the governor and the legislative council before July 1, 2010. Thereafter, the task force shall continue to review and periodically update or otherwise amend the state plan so that it best serves the needs of individuals with autism spectrum disorder. The task force shall provide an annual report to the governor and the legislative council regarding the status of the state autism spectrum disorder plan.

**SECTION 2. AMENDMENT.** Section 23-09.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-01. Definitions.** In this chapter unless the context otherwise requires:

1. "Autism spectrum disorder" means a brain disorder that may prevent understanding of what a person sees, hears, or otherwise senses and is conceptualized as a behavioral syndrome with multiple biological manifestations.
2. "~~Autistic-like~~" means ~~exhibiting one or more of the characteristics of autism.~~
3. "Department" means the state department of health.
- 4- 3. "~~Residential care facility for children with autism or autistic-like characteristics~~ spectrum disorder" means a living facility providing twenty-four-hour assistance for five or more children not related by blood or marriage to the operator through a multidisciplinary approach including a medical diagnosis of autism ~~or autistic-like characteristics~~ spectrum disorder.
- 5- 4. "Residential care giver" means an individual who routinely provides assistance with activities of daily living or direct care services in implementing the treatment plan, behavior management, or education to residents in a residential care facility for children with autism ~~or autistic-like characteristics~~ spectrum disorder.

**SECTION 3. AMENDMENT.** Section 23-09.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-02. Department to establish standards - Licensing - Inspection.** The department shall establish standards for the licensure of residential care facilities for children with autism ~~or autistic-like characteristics spectrum disorder~~, regularly inspect the facilities, and grant annual licenses to the facilities that meet the established standards. Upon the request of the department, the state fire marshal shall inspect any facility seeking licensure, or any licensed facility, and shall report the inspection results to the department.

**SECTION 4. AMENDMENT.** Section 23-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-03. License required - Term - Revocation.** No person may operate or manage a residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ unless the facility has been licensed by the department. The license must state the name of the owner or manager of the facility, its location, and the maximum number of persons who may reside in the facility at any time. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

**SECTION 5. AMENDMENT.** Section 23-09.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-04. Method of providing service.** A residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must be specifically designed, arranged, and staffed to provide twenty-four hour assistance with activities of daily living in a homelike environment in response to the individual needs of the residents. A residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must provide or make arrangements for diagnostic and treatment services, behavioral management, and educational services to enable residents to attain or maintain their highest practicable level of functioning.

**SECTION 6. AMENDMENT.** Section 23-09.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-05. Records.** The owner or manager of a residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must keep a record of every individual admitted to the facility, in the manner and form prescribed by the department.

**SECTION 7. AMENDMENT.** Section 23-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-06. Violations - Injunction.** The department shall prosecute all violations of this chapter. The department may apply to the district court of the county in which the residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ is located, for a temporary or permanent injunction restraining any person from conducting, managing, or operating a facility without a license as required by this chapter.

**SECTION 8. AMENDMENT.** Section 23-09.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.4-08. Penalty.**

1. Any person who operates or manages a residential care facility for children with autism ~~or autistic-like characteristics~~ spectrum disorder without first obtaining a license as required by this chapter is guilty of a class B misdemeanor.
2. Any person who violates any provision of this chapter or any rule adopted under this chapter may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues, plus interest and any costs incurred by the department to enforce this penalty. The civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by rules adopted under this chapter.

**SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000, or so much of the sum as may be necessary, to the department of human services for the purpose of paying miscellaneous expenses incurred by the autism spectrum disorder task force, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 414****HOUSE BILL NO. 1043**

(Legislative Council)  
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to a dementia care services program; to provide for a report to the legislative council; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Dementia care services.** As used in this section, dementia means the condition of an individual involving loss of memory and impairment of cognitive functions severe enough to interfere with the individual's daily life. The department shall contract with a private provider for a dementia care services program in each area of the state served by a regional human service center. The dementia care services must include:

1. Identifying available services within the region;
2. Providing information to medical professionals, law enforcement, and the public regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers;
3. Assessing the needs of individuals with dementia and their caregivers;
4. Training care providers to manage and provide for the care of individuals with dementia;
5. Providing consultation services to individuals with dementia and their caregivers; and
6. Facilitating the referral of individuals with dementia and their caregivers to appropriate care and support services.

**SECTION 2. REPORT TO LEGISLATIVE COUNCIL - DEPARTMENT OF HUMAN SERVICES.** During the 2009-10 interim, the department of human services shall report to the legislative council after June 30, 2010, regarding the outcomes of the dementia care services program, including the estimated long-term care and health care costs avoided, and improvement in disease management and caregiver assistance.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing the dementia care services program under section 1 of this Act for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 415****HOUSE BILL NO. 1044**

(Legislative Council)  
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the development of a program for services to transition-aged youth at risk; and to provide a continuing appropriation.

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

**SECTION 1.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Program for services to transition-aged youth at risk - Definition - Rules - Continuing appropriation.**

1. The department shall develop, within current appropriations, a program for services to transition-aged youth at risk. The department shall use a wraparound planning process. The department shall adopt rules to establish eligibility, services, and a distinct statewide interagency advisory council on transition-aged youth at risk, with youth and family representation, and with regional subcommittees. For the purposes of this section, transition-aged youth means children and young adults at risk due to:
  - a. Deprivation or other activities resulting in youth being involved with the foster care or juvenile justice system;
  - b. Serious mental illness or serious disabilities that do not qualify the youth for developmental disabilities case management; or
  - c. Suicidal tendencies.
2. Services under the program must include:
  - a. Individualized assessments to determine the needs and appropriate services to individual transition-aged youth at risk;
  - b. Single plan of care to coordinate services among available service systems, emphasizing existing case management resources;
  - c. Independent living skills, including self-advocacy training;
  - d. Enhanced or extended vocational rehabilitation, including transition from education to employment and from secondary education to higher education;
  - e. In-home support, including mentors, individual and family training, and access to respite care; and

- f. Development of a statewide independent living skills curriculum for youth and families.
3. Services to an individual youth must be appropriate to that individual and need not include all services of the program.
4. The department may accept and receive grants and other sources of funding for the development of a program for services to transition-aged youth at risk. All moneys received by the department as gifts, grants, or donations for the development of a program for services to transition-aged youth at risk under this section are appropriated on a continuing basis to the department.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 416****SENATE BILL NO. 2231**

(Senators J. Lee, Fiebiger, Krebsbach)  
(Representatives N. Johnson, Hofstad, Kerzman)

AN ACT to provide for contracting with a statewide charitable food recovery and distribution organization; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Department of human services food assistance contracts.**

The department of human services shall contract with a statewide charitable food recovery and distribution organization to develop and implement new methods of delivering charitable food assistance services in underserved counties, to include a mobile food pantry program and prepacked food basket program; expand the recovery of surplus food from the retail and wholesale food industry for distribution to charitable feeding programs; provide training, technical assistance, and equipment grants to community food pantries and emergency meal programs; and develop a cross-referral system between charitable feeding programs and government assistance programs that help clients achieve self-sufficiency.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the state department of human services for the purpose of contracting with a statewide provider of charitable food distribution services to address gaps in service in, expand the recovery and distribution of surplus food supplies for, and strengthen the capacity of, the North Dakota charitable emergency feeding network, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 417****SENATE BILL NO. 2423**

(Senators Fischer, Heckaman)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to audits and reimbursements of private providers for individuals with developmental disabilities; and to provide for a report to the legislative assembly.

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

**SECTION 1.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Developmental disability provider review.** With respect to private providers for individuals with developmental disabilities, the department shall conduct a review of the audit and reimbursement process and a review and reconsideration of the ninety-five percent occupancy rule.

**SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY.** The department of human services shall provide a report to the sixty-second legislative assembly which includes recommendations or proposed legislation relating to audits and reimbursements of private providers for individuals with developmental disabilities.

Approved April 9, 2009

Filed April 13, 2009

**CHAPTER 418****SENATE BILL NO. 2198**

(Senators Mathern, J. Lee, Wardner)  
(Representatives R. Kelsch, Mueller, Klemm)

AN ACT to create and enact five new sections to chapter 50-06.4 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the provision of services to individuals with traumatic brain injury; to amend and reenact sections 50-06.4-02 and 54-38-05 of the North Dakota Century Code, relating to joint meetings and duties of the department of human services; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

**Traumatic brain injury - Prevention and identification activities.** The department shall provide outreach services and conduct public awareness efforts regarding the prevention and identification of traumatic brain injury.

**SECTION 2.** A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

**Traumatic brain injury - Services and activities - Acceptance of moneys.** The department may accept and expend moneys from any public or private source, including federal sources, for any purpose involving traumatic brain injuries or the provision of services to individuals with traumatic brain injury and their families.

**SECTION 3.** A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

**Traumatic brain injury - Informal supports - Contracts - Exemption.**

1. The department shall contract with public or private entities for the provision of informal supports to individuals with traumatic brain injury. As used in this section, "informal supports" includes information sharing and referral services, peer mentoring, training, facilitation of support groups, public awareness efforts, and individual and programmatic advocacy efforts.
2. Any entity contracting with the department under this section must:
  - a. Demonstrate expertise in serving and enhancing the quality of life for individuals with traumatic brain injury;
  - b. Agree to work in cooperation with the department, case managers, and veterans' service officers; and
  - c. Agree to consult with veterans and other individuals having a traumatic brain injury, their families, and their caregivers.

3. The department is exempt from complying with chapter 54-44.4 with respect to contracting for the provision of informal supports under this section.

**SECTION 4. AMENDMENT.** Section 50-06.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.4-02. Department to be lead agency - Cooperation of other agencies - Joint meeting.** The department shall act as lead agency in the state for the purpose of coordinating services to persons with traumatic brain injury. At least annually the department shall call a joint meeting of the adjutant general, the state department of health, the department of veterans' affairs, and the superintendent of public instruction to discuss the provision of services to individuals with traumatic brain injury. State agencies and political subdivision agencies shall cooperate with the department to permit the department to efficiently coordinate services to persons with traumatic brain injury while avoiding duplication of services. Neither this chapter, nor any activity undertaken by the department under this chapter, may be construed as creating a right to any benefit or service not specifically required to be granted as a condition of the receipt of grants of federal funds.

**SECTION 5.** A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

**Social and recreational services.** The department shall provide or contract for the provision of social and recreational services, including day supports, to individuals with traumatic brain injury, if the department determines that available vocational rehabilitative services do not meet the individuals' needs.

**SECTION 6.** A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

**Vocational rehabilitation and consultation.** The department shall provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with traumatic brain injury who receive case management for personal care services. Services under this section include extended support for individuals at risk of losing their employment upon exhausting their vocational services.

**SECTION 7.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Traumatic brain injury - Home and community-based services - Outreach activities - Quality control.**

1. As part of the personal care services program for eligible medical assistance recipients and as part of the department's services for eligible disabled and elderly individuals, the department shall provide home and community-based services to individuals who have moderate or severe impairments as a result of a traumatic brain injury. The department shall give priority under this section to individuals whose impairments are less severe or similar to those of individuals who are eligible for medicaid waivers.
2. The department shall conduct outreach and public awareness activities regarding the availability of home and community-based services to

individuals who have moderate or severe impairments as a result of a traumatic brain injury.

3. The department shall conduct quality control activities and make training available to case managers and other persons providing services to individuals under this section.

**SECTION 8. AMENDMENT.** Section 54-38-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-38-05. Duties of department.** The department shall:

1. Study alcoholism and drug abuse and related problems, including methods and facilities available for the care, custody, detention, treatment, employment, and rehabilitation of resident alcoholics and drug dependent persons.
2. Promote meetings and programs for the discussion of alcoholism and drug abuse or any of their aspects, disseminate information on the subject of alcoholism and drug abuse for the guidance and assistance of individuals, courts, and public or private agencies for the prevention of alcoholism and drug abuse, and inform and educate the general public on problems of alcoholism and drug abuse, their prevention and treatment, to the end that alcoholism and drug abuse may be prevented and that persons suffering from alcoholism or drug dependency may be disposed to seek available treatment.
3. Conduct, promote, and finance, in full or in part, studies, investigations, and research, independently or in cooperation with universities, colleges, scientific organizations, and public or private agencies.
4. Accept for examination, diagnosis, guidance, and treatment, insofar as funds permit, any resident of the state coming to the department of that person's own volition for advice and guidance. For purposes of this subsection, "any resident" includes veterans and nonveterans who have a traumatic brain injury.
5. Establish, from time to time, policies governing the evaluation, acceptance, care, and treatment of alcoholics and drug dependent persons.
6. Develop, through consultation with the director of the department of transportation, a policy governing programs for persons who, subsequent to being convicted for traffic offenses, are referred to educational courses on alcohol, drugs, and driving.

**SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$330,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing services to individuals with traumatic brain injury, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 419****HOUSE BILL NO. 1175**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 26.1 and a new section to chapter 50-09 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 5 of section 14-09-08.2, subsections 1, 2, and 9 of section 14-09-09.3, subsection 3 of section 14-09-09.10, subsections 4 and 5 of section 14-09-09.24, subsection 5 of section 14-09-09.33, subsections 9 and 10 of section 14-09-25, sections 20.1-01-26.1 and 34-15-06, subsection 1 of section 35-34-06, subsection 2 of section 50-09-02.1, subsections 1 and 5 of section 50-09-08.2, subsection 2 of section 50-09-14, and sections 50-09-36 and 50-24.1-02.1 of the North Dakota Century Code and section 12 of chapter 135 of the 2005 Session Laws, relating to child support enforcement; to provide for a task force on child support enforcement; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order; ~~provided that the affidavit described in subsection 3 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.~~

<sup>166</sup> **SECTION 2. AMENDMENT.** Subsections 1, 2, and 9 of section 14-09-09.3 of the North Dakota Century Code are amended and reenacted as follows:

1. Any ~~failure of an income payer failing~~ to comply with this section or section 14-09-09.16 may be ~~punished for~~ sanctioned as a contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of ~~such~~ the contempt.
2. Any income payer who fails or refuses to withhold or deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to withhold or deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to withhold or deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or

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<sup>166</sup> Section 14-09-09.3 was also amended by section 1 of House Bill No. 1329, chapter 148.

actual damages caused by the violation, whichever is greater, in addition to the amount of income that should have been withheld or delivered, costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the child support agency under subsection 9 of section 14-09-09.3. Any damages collected by the child support agency under this subsection must be paid allocated by the court between each affected obligor and obligee, or made payable on behalf of an obligor to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

9. An income payer who fails to withhold or deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished sanctioned as a contempt of court. Any late fee collected assessed by the child support agency under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to withhold or deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.

**SECTION 3. AMENDMENT.** Subsection 3 of section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

3. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders, and includes past-due support.

**SECTION 4. AMENDMENT.** Subsections 4 and 5 of section 14-09-09.24 of the North Dakota Century Code are amended and reenacted as follows:

4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:
  - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
  - b. Proof of timely payment of previously ordered support, if any; and

- c. A requirement that the obligor keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
  - a. Provides that the obligor shall keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access;
  - b. Describes the provisions by which regular payment of child support is assured; and
  - c. Is reviewed and approved by the court and entered into the court's records.

**SECTION 5. AMENDMENT.** Subsection 5 of section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

5. Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, an obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.

**SECTION 6. AMENDMENT.** Subsections 9 and 10 of section 14-09-25 of the North Dakota Century Code are amended and reenacted as follows:

9. If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:
  - a. As specifically provided in a court order in the event of the obligee's death;
  - b. To the obligee's estate or as provided in the obligee's will;
  - c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; ~~or~~
  - d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old; or
  - e. Refunded to the obligor if the court determines that the past-due child support cannot be disbursed under this section.
10. Unless any party to a child support order objects within ten days of the date of a notice sent by first-class mail to the party's last-known address, the child support agency ~~or clerk of court~~ may change the payee of a child support obligation for the current month or a future month upon request of a guardian or other person who has legal custody of the child or children for whom the child support is being paid.

**SECTION 7. AMENDMENT.** Section 20.1-01-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-01-26.1. Hunting, trapping, or fishing prohibited while privileges are suspended - Penalty.** No person may directly or indirectly hunt, trap, or fish or assist in any way in hunting, trapping, or fishing while the person's privileges have been suspended by a court or by the department of human services under section 50-09-08.6. Any person violating this section is guilty of a class A misdemeanor.

**SECTION 8.** A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

**Child support insurance data match.** Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.

**SECTION 9. AMENDMENT.** Section 34-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-06. Recovery of civil money penalties.** A civil money penalty assessed under this chapter is payable fifteen days after service on the employer, by first-class mail, of notice of imposition of the civil money penalty. ~~If an order for child support was issued by a court in this state, A judgment against an employer for failure to pay a civil money penalty may be punished enforced as a contempt of court by the court that issued an order for child support imposed upon a newly hired employee whose hiring was not reported timely, completely, and correctly. If an order for child support was issued by a court or administrative tribunal in another state or if there is no current order for child support for the employee, failure to pay a civil money penalty may be punished as a contempt of court by any court of this state with jurisdiction over the employer.~~

**SECTION 10. AMENDMENT.** Subsection 1 of section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In the case of personal property that does not consist of a vehicle, a vessel, or an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing a notice of lien with the office of the recorder in the county in which the personal property may be found or, with the secretary of state, or with a third party who is in possession of the personal property. The notice must particularly describe the property to be subjected to the lien and the name and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.

**SECTION 11. AMENDMENT.** Subsection 2 of section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system. Notwithstanding section 14-08.1-05, any record of a child support obligation that is currently being enforced in another jurisdiction and not by a child support agency, or that is owed by an obligor who is deceased, or that is owed to a deceased obligee for whom disbursement of any collections could not occur under section 14-09-25, may be removed indefinitely from the statewide automated data processing system until a request is received from a party to the child support case to restore those records.

**SECTION 12. AMENDMENT.** Subsections 1 and 5 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

1. In implementing programs under title IV-D, the state agency, and the officials, employees, and agents of the agency may:
  - a. Conduct examinations;
  - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
  - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred and not to include any costs incurred by a financial institution that has not entered into an agreement under subdivision h nor costs incurred by any person that reflects the difference between responding to a subpoena and providing information under subdivision g or k;
  - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
  - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:
    - (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
    - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
  - f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;

- g. Notwithstanding any provision of law this code making the records confidential, in addition to or in lieu of a subpoena, obtain access, including automated access in the case of records maintained in automated data bases, to:
- (1) Records of other state and local government agencies, including:
    - (a) Vital statistics, including records of marriage, birth, and divorce;
    - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
    - (c) Records concerning real and titled personal property;
    - (d) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
    - (e) Employment security records;
    - (f) Workforce safety and insurance records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the organization, and whether and where that person is currently employed;
    - (g) Records of all agencies administering public assistance programs;
    - (h) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
    - (i) Corrections records;
    - (j) Law enforcement records; and
    - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
  - (2) Certain information contained in records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, subject to safeguards on privacy and information security, consisting of:
    - (a) The names and, addresses, social security numbers, and other requested relevant income or asset information of such individuals and the names and

addresses of the employers of such individuals, as appearing in customer records of public utilities, including cellular and wireless telephone service providers, and cable television companies, pursuant to an administrative subpoena if requested; and

- (b) Information on assets and liabilities on those individuals held by financial institutions;
- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
  - (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past-due support, as identified by the state agency by name and social security number or other taxpayer number; and
  - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support;
- i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:
  - (1) Records of the department of transportation; and
  - (2) Law enforcement records; ~~and~~
- j. Notwithstanding any provision of law making the records confidential:
  - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
  - (2) Upon payment of a sufficient amount, satisfy and release that lien; and
- k. Upon agreement, exchange information, including social security numbers, with a person listed in subdivision g for the purpose of identifying individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, and any income, assets, or liabilities of those individuals.

5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other ~~state~~ state jurisdiction charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

**SECTION 13. AMENDMENT.** Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another ~~state~~ state jurisdiction, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to enforce that order may seek review of the action in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions in a proceeding under chapter 28-32.

**SECTION 14. AMENDMENT.** Section 50-09-36 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-36. Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 ~~or~~, 50-09-35, or section 15 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**SECTION 15.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Report of gambling winnings.** Before a gaming operator makes a payment of winnings for which the gaming operator is required to file an internal revenue service form W-2G or substantially equivalent form, the gaming operator shall obtain the name, address, and social security number of the winner and submit the information to the state agency through a secure interactive website that is maintained by the state agency. If the state agency replies to the gaming operator that the winner does not owe past-due support or if the gaming operator is unable to receive information from the state agency after attempting in good faith to do so, the gaming operator may make the payment to the winner. If the state agency replies that the winner owes past-due support, the reply must include the amount of past-due support owed by the winner and the location of the office with which the

winner may file a protest under section 50-09-14. The gaming operator shall withhold from the payment to the winner an amount equal to the total winnings or the amount of past-due support, whichever is less. Within seven business days after withholding the payment, the gaming operator shall send the amount withheld to the state disbursement unit, along with the name, address, and social security number of the winner. The gaming operator may withhold and retain an additional sum of three dollars from the winner to cover expenses involved in sending the payment. A gaming operator that withholds funds under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with this section.

**SECTION 16. AMENDMENT.** Section 50-24.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.1. Assignment of claim.**

1. Each applicant or recipient of benefits under this chapter must be deemed to have assigned, to the department of human services, any right of recovery the applicant or recipient may have for medical costs incurred under this chapter not exceeding the amount of funds expended by the department for the care and treatment of the applicant or recipient. The applicant or recipient, or other person empowered by law to act in the applicant's or recipient's behalf, shall execute and deliver an assignment of claim, assignment of rights, or other authorizations as necessary to secure fully the right of recovery of the department. The assignment:
  1. a. Is effective as to both current and accrued medical support recovery obligations.
  2. b. Takes effect upon a determination that an applicant is eligible for assistance under this chapter.
2. The department of human services may compromise claims arising out of assignments made under this section on such terms as it may deem just and appropriate. The department of human services may not be compelled to compromise any claim.

**SECTION 17. AMENDMENT.** Section 12 of chapter 135 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 12. TRANSITION.** A proceeding to adjudicate parentage which was commenced before the effective date of this chapter is governed by the law in effect at the time the proceeding was commenced. A complaint or motion to adjudicate parentage that is filed with the court after August 1, 2009, is governed by this chapter even if the proceeding was commenced prior to August 1, 2009.

**SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE.** The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force must include two members of the legislative assembly appointed by the chairman of the legislative council. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and

desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, the creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The department of human services shall present the findings and recommendations of the task force, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 19. EFFECTIVE DATE.** Sections 14 and 15 of this Act become effective on July 1, 2010.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 420****HOUSE BILL NO. 1038**

(Legislative Council)  
(Judicial Process Committee)

AN ACT to amend and reenact section 50-09-08.6 of the North Dakota Century Code, relating to restrictions on an individual's operator's license for nonpayment of child support or failure to obey a subpoena.

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

**SECTION 1. AMENDMENT.** Section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.**

1. As used in this section:

a. "License" means:

- (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
- (2) Any certificate, permit, or license issued by an agency of the state which the obligor is required to obtain prior to engaging in a recreational activity; and
- (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.

b. "Licensee" means a person who has applied for or currently possesses a license.

c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.

d. "Restrict", as it relates to the operator's license of an obligor or a person who fails to comply with a subpoena, includes the authority of the state agency to authorize the issuance, upon request for good cause, of a restricted operator's license that is solely for the use of a motor vehicle during the licensee's normal working hours.

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.
3. Before withholding, restricting, or suspending a license under subdivision a or b of subsection 2, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the notice.
4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a license under subdivision c of subsection 2 at any time if the licensee fails to comply with a payment plan negotiated under this section. A copy of the state agency's order to withhold, restrict, or suspend a license must be sent to the licensee by first-class mail to the licensee's last-known address. The order must state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the order.
5. A request for a hearing under this section must be made to the court that issued or considered the child support order. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the request may be made to any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
6. In a contest under this section, the court must affirm the action of the state agency to withhold, restrict, or suspend a license unless it finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, is listed on the arrears registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.
7. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in

full, or enters into a payment plan with the state agency under this section.

8. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
9. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
10. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
11. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 421****SENATE BILL NO. 2045**

(Legislative Council)  
(Long-Term Care Committee)

AN ACT to amend and reenact subdivision m of subsection 1 of section 50-10.2-02 of the North Dakota Century Code, relating to advance notice requirements of any transfer or discharge of a resident from a nursing home, swing-bed hospital, or basic care or assisted living facility.

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

**SECTION 1. AMENDMENT.** Subdivision m of subsection 1 of section 50-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

- m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 422****SENATE BILL NO. 2162**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-06 and two new sections to chapter 50-11.1 of the North Dakota Century Code, relating to criminal history record checks and to self-declaration of an individual who provides early childhood services; to amend and reenact subdivision g of subsection 2 of section 12-60-24 and sections 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.8, 50-11.1-08, 50-11.1-09, 50-11.1-10, 50-11.1-11, 50-11.1-11.1, 50-11.1-12, and 50-11.1-13.1 of the North Dakota Century Code, relating to criminal history record checks, licensing and registration of early childhood services providers, investigation of early childhood services providers, denial or revocation of request for early childhood services provider licensure or registration, and resource and referral services; to repeal section 50-11.1-03.1 of the North Dakota Century Code, relating to cardiopulmonary resuscitation certification for a family child care home operator; to provide a statement of legislative intent; to provide a penalty; to provide an appropriation; and to provide an expiration date.

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

<sup>167</sup> **SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

**SECTION 2.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.** The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;
2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and
3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The

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<sup>167</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of House Bill No. 1437, chapter 377, and section 1 of Senate Bill No. 2152, chapter 379.

department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home.

**SECTION 3. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood facility where program licensed to provide early childhood services ~~are provided~~ to nineteen or more children.
3. "County agency" means the county social service board in each of the counties of the state.
4. "Department" means the department of human services.
5. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
6. "Early childhood facility program" means any facility program licensed under this chapter where early childhood services are provided; whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, drop-in care center, or known by any other name for at least two hours a day for three or more days a week.
7. "Early childhood services" means the care, supervision, education, or guidance of a child or children, ~~unaccompanied by the child's parent, guardian, or custodian,~~ which is provided in exchange for money, goods, or other services ~~and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week.~~ Early childhood services does not include:
  - a. Substitute parental child care provided pursuant to chapter 50-11.
  - b. Child care provided in any educational facility, whether public or private, in grade one or above.
  - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
  - d. Child care, preschool, and prekindergarten services provided to ~~preschool age handicapped~~ children under six years of age in any educational facility through a program approved by the superintendent of public instruction.

- e. Child care provided in facilities operated in connection with a church, ~~shopping center~~, business, or ~~other establishment organization~~ where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, ~~shopping~~, or is engaged in other activities, on or near the premises.
  - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
  - g. Summer resident or day camps for children which serve no ~~preschool age~~ children under six years of age for more than two weeks.
  - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
  - i. ~~Headstart~~ Head start and early head start programs that are federally funded and meet federal headstart head start performance standards.
  - j. Child care provided by a hospital in a medical facility by medical personnel ~~within the physical structure of the hospital~~ to children who are ill.
8. "Family child care home" means ~~an occupied a private residence in which licensed to provide~~ early childhood services ~~are provided~~ for no more than seven children at any one time, except that the term includes a residence ~~providing licensed to provide~~ early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
9. "Group child care home" or "group child care facility" means a child care facility ~~where program licensed to provide~~ early childhood services ~~are provided for eight through eighteen or fewer children or a facility, other than an occupied private residence, which serves fewer than eight children.~~
10. "Household member" means an adult living in the private residence out of which a program is operated, regardless of whether the adult is living there permanently or temporarily.
11. "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~44.~~ 12. "~~License~~ Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility and provide early childhood services.

- 42- 13. "Multiple licensed ~~facility program~~" means an early childhood ~~facility that provides program licensed to provide~~ more than one type of early childhood services.
- 43- 14. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
15. "Parent" means an individual with the legal relationship of father or mother to a child or an individual who legally stands in place of a father or mother, including a legal guardian or custodian.
16. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
17. "Preschool ~~educational facility~~" means a ~~facility that offers program licensed to offer~~ early childhood services ~~and, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that which serves no child for more than three hours per day.~~
18. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- 44- 19. "Registrant" means the holder of ~~a~~ an in-home provider registration document issued by the department in accordance with this chapter.
- 45- 20. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- 46- 21. "Registration document" ~~is~~ means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
22. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years.
23. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to three children below the age of twenty-four months or for no more than five children through the age of eleven.
24. "Staff member" means operator, caregiver, provider, or any other individual, whether paid or volunteer, who provides care, supervision, or guidance to children in an early childhood program and includes food preparation, transportation, and maintenance personnel.

**SECTION 4. AMENDMENT.** Section 50-11.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02.1. Number of children in program - How determined.** For the purpose of determining the number of children in an receiving early childhood facility services, all children of the operator or employees, present in the facility on the

premises and under the age of twelve years, must be counted except for purposes of determining fire, safety, or zoning requirements. All children present are protected by this chapter regardless of whether money is received or goods or other services are received for their care.

**SECTION 5. AMENDMENT.** Section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-03. Operation of family child care home, group child care facility, preschool educational facility, and child care center early childhood services program - License required - Fees.**

1. A license for a family child care ~~home~~ is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or ~~more~~ seven children through age eleven at any one time which includes no more than three children under twenty-four months of age. ~~Those persons not required by this subsection to hold a family child care license may voluntarily apply for and receive such a license.~~
2. ~~No~~ A license for group child care is required if early childhood services are provided for at least eight and no more than eighteen children at any one time.
3. A license for a child care center is required if early childhood services are provided for more than eighteen children at any one time.
4. A person, partnership, firm, corporation, limited liability company, association, or nongovernmental organization may not establish or operate a family child care, group child care facility, preschool educational facility, school-age child care, or child care center unless licensed to do so by the department. ~~No~~
5. A governmental organization may not establish or operate a family child care, group child care facility, preschool educational facility, school-age child care, or child care center without first receiving public approval by certifying, to the department or the department's authorized agent, that it has complied with all rules applicable to family child care, group child care facilities, preschool educational facilities, or school-age child care, or to child care centers.
- 3- 6. An applicant for a license shall submit the following nonrefundable fees with the application:
  - a. The operator of a family child care ~~home~~ applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
  - b. The operator of a group child care ~~home~~ applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
  - c. The operator of a preschool educational facility applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.

- d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
  - e. The operator of a multiple licensed ~~facility~~ program applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
- 4- ~~7.~~ In addition to any criminal sanctions or other civil penalties which may be imposed pursuant to law, the operator of an early childhood ~~facility~~ program who, after being given written notice by a ~~representative~~ of the department or the department's authorized agent, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of ~~fifty two hundred~~ fifty two hundred dollars per day for each day of operation without ~~such the~~ required license. The civil penalty may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.
- 5- ~~8.~~ All fees collected under subsection ~~3 6~~ must be paid to the department or the department's authorized agent and must be used to defray the cost, to the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

**SECTION 6. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.** ~~Applications~~

- 1. An application for operation of an early childhood ~~facility~~ license program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all ~~facilities~~ premises to be used by the early childhood program applying for a license. The applicant for a license and the ~~applicant's employees~~ staff members, and, if the license application is for an occupied program that will be located in a private residence, every person individual living or working in that residence, may must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood ~~facility~~ program upon a showing that:
- 4- a. The premises to be used are in fit and sanitary condition ~~and~~ are properly equipped to provide for the health and safety for all children ~~who may be received, and must be maintained according to rules adopted by the department;~~
  - 2- ~~The persons in charge of the facility and their assistants~~
    - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards

prescribed for their qualifications by the rules and regulations of the department;

3. ~~The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;~~
  - c. The application does not include any fraudulent or untrue representations;
4. ~~d. The facility owner or operator, or applicant has not had a previous license or self-declaration denied or revoked within the ~~one hundred eighty days~~ twelve months prior to the date of the current application;~~
  - e. The owner or operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial cannot have occurred within the five years immediately preceding the application date;
5. ~~f. The facility program has paid its license fees and any penalties assessed against the facility program as required by section 50-11.1-03;~~
  - g. The family child care owner or operator has received training and is currently certified in cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department, and is currently certified in first aid by a program approved by the department; and
6. ~~h. The group child care, preschool, school-age child care, or child care center facility maintains, at all times during which early childhood services ~~is~~ are provided, at least one person who has received training and is currently certified in ~~rescue~~ cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department, and at least one person who is currently certified in first aid by a program approved by the department.~~
  2. The license issued to the owner or operator of an early childhood facility ~~must~~ services program may not be in force and effect effective for a period of not more longer than two years.
  3. The department may consider the applicant's prior licensing, self-declaration, and registration history in determining whether to issue a license.
  4. The department may issue a provisional or restricted license in accordance with the rules of the department.

**SECTION 7. AMENDMENT.** Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06. In-home provider - Registration voluntary - Prerequisites for approval - Issuance of registration certificate document - Term.** ~~In-home~~

providers An in-home provider may apply for a registration certificate document from the department. The department or the department's authorized agent shall determine whether the applicant meets the standards have been met and shall issue or deny a registration certificate document based upon that determination. Registration certificates A registration document for an in-home providers must be in force and effect provider may not be effective for not more longer than one year. The application does not include any fraudulent or untrue representations. The department may consider the early childhood services history of the applicant in determining issuance of a registration document. The department may investigate an applicant according to rules adopted by the department to determine whether the applicant has a criminal record or has been the subject of a finding of services required for child abuse and neglect. The department may issue a provisional in-home provider registration document in accordance with the rules of the department.

**SECTION 8.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Self-declaration - Approved application required - Fees.**

1. a. An application for self-declaration is voluntary. An individual may apply for self-declaration from the department. The department or the department's authorized agent shall determine whether the standards for self-declaration have been met and shall approve or deny a self-declaration based upon that determination.
- b. An applicant for self-declaration shall pay a nonrefundable fee of fifteen dollars at the time the application is filed.
2. All fees collected under this section must be paid to the department or the department's authorized agent and must be used to defray the cost of investigating, inspecting, and evaluating applications for self-declarations or to provide training to providers of early childhood services.

**SECTION 9.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Application for self-declaration - Prerequisites for approval - Approval - Term.**

1. Applications for self-declarations must be made on forms provided and in the manner prescribed by the department. The department or the department's authorized agent shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department or the department's authorized agent shall conduct the investigation in accordance with the rules adopted by the department and shall determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall approve a self-declaration upon the applicant's declaration that:
  - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and shall be maintained

according to the standards prescribed by the rules of the department;

- b. The applicant is able to provide for the health and safety of each child receiving early childhood services from the applicant according to this chapter and standards prescribed by the department as set forth in its rules;
  - c. The applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;
  - d. The applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial cannot have occurred within five years of the application date;
  - e. The applicant has paid the required application fees;
  - f. The applicant has paid any penalties assessed against the program required by section 50-11.1-03;
  - g. The applicant is currently certified in cardiopulmonary resuscitation by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation training program approved by the department;
  - h. The applicant is currently certified in first aid through a training program approved by the department; and
  - i. The application does not include any fraudulent or untrue representations.
2. The department may consider the early childhood services history of the applicant in determining issuance of a self-declaration document.
  3. The department may issue a provisional self-declaration document in accordance with the rules of the department.

**SECTION 10. AMENDMENT.** Section 50-11.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06.1. Conviction not bar to licensure, self-declaration, or registration - Exceptions.** Conviction of an offense does not disqualify ~~a person an individual~~ from licensure, self-declaration, or registration under this chapter unless the department determines ~~that the~~:

1. The offense has a direct bearing upon a person's the individual's ability to serve the public as the owner or proprietor operator of an early childhood facility program, holder of a self-declaration, or as an in-home provider; or that, following
2. Following conviction of any offense, the person individual is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 11. AMENDMENT.** Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees.** Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed

1. Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services provider licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, shall obtain two sets of that person's own the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and.
2. The individual shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department department's authorized agent.
3. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit the fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck, household members, or staff members in accordance with section 12-60-24.
4. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.4-05.2 is found which would disqualify the person department's authorized agent.
5. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application.
6. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

8. The department may use background investigation findings to determine approval, denial, or revocation of an early childhood services license, self-declaration, or in-home registration.
9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act.

**SECTION 12. AMENDMENT.** Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07. Investigation of applicants, licensees, and registrants applicant, licensee, holder of self-declaration or registration document, and staff members - Inspection of programs and premises - Maintenance of records - Confidentiality of records.**

1. The department ~~and~~ or its authorized agent at any time may investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of the facility their premises, the qualifications of the provider a provider of early childhood services in any early childhood facility, and the qualifications, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document under this chapter.
2. Upon request of the department or its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect ~~any facility~~ the premises for which a license or self-declaration is applied ~~for~~ or issued and shall report the findings to the department or the department's authorized agent.
2. ~~Licenses and registrants~~
3. A licensee, holder of a self-declaration, or registrant shall:
  - a. Maintain ~~such~~ records as the department ~~may prescribe~~ prescribes regarding each child in ~~their~~ the licensee's, holder's, or registrant's care and control, and shall report to the department or the department's authorized agent, when requested, such upon forms furnished by the department, facts as the department may require with reference to the children upon forms furnished by the department each child;
  - b. Admit for inspection ~~authorized agents~~ authorized agents of the department or the department's authorized agent and open for examination all records, books, and reports ~~of the home or facility;~~ and
  - c. Notify the parent, ~~guardian, or custodian~~ guardian, or custodian of each child receiving ~~care at the facility~~ early childhood services and ~~each employee of the facility~~ all staff members of the process for reporting a complaint or a suspected licensing violation.
- 3- 4. Except as provided in subsection 4 5, all records and information maintained with respect to children any child receiving early childhood

services are confidential and must be properly safeguarded and may not be disclosed except:

- a. In a judicial proceeding;
  - b. To officers of the law or other legally constituted boards or agencies; or
  - c. To persons having a definite interest in the well-being of the child ~~or children~~ concerned and who, in the judgment of the department, are in a position to serve ~~their~~ the child's interests should that be necessary.
- 4- 5. A provider of early childhood services, upon the request of the parent ~~or guardian~~ of a child for whom the provider provides such services, shall make available to the parent ~~or guardian~~ a list of the names, telephone numbers, and addresses of the parents ~~or guardians~~ of children for whom early childhood services are provided. The list may ~~only~~ include only the names, telephone numbers, ~~or electronic mail addresses, and~~ addresses of parents ~~or guardians~~ who grant the provider permission to disclose that information.
6. The following information for early childhood services licensees, self-declarations, in-home providers, staff members, and adults residing in a home out of which early childhood services are provided is not confidential:
- a. Name;
  - b. Address;
  - c. Telephone number; and
  - d. Electronic mail address.

**SECTION 13. AMENDMENT.** Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.1. Notice.** After each inspection or reinspection, the department or the department's authorized agent ~~shall~~, by certified mail, shall send copies of any correction order or notice of noncompliance, to the early childhood facility program or holder of a self-declaration.

**SECTION 14. AMENDMENT.** Section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.2. Correction orders.**

1. Whenever the department or the department's authorized agent finds, upon inspection ~~of an early childhood facility~~, that the facility program, self-declaration, or premises is not in compliance with ~~the provisions of~~ this chapter, or the rules ~~and regulations promulgated thereunder~~ adopted under this chapter, the department or the department's authorized agent shall issue a correction order ~~must be issued~~ to the facility program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance.

The correction order must cite the specific statute or ~~regulation~~ rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order ~~is not complied with~~ in a timely fashion. ~~The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.~~

2. Within three business days of the receipt of the correction order, the licensee of the early childhood ~~facility program~~ or the holder of a self-declaration shall notify the parent, ~~guardian, or custodian~~ of each child receiving ~~care at the facility~~ early childhood services that a correction order has been issued. In addition to providing notice to the parent, ~~guardian, or custodian~~ of each child, the licensee or holder of a self-declaration shall post the correction order in a conspicuous location within upon the facility early childhood premises until the violation has been corrected or for five days, whichever is longer.

**SECTION 15. AMENDMENT.** Section 50-11.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.3. Reinspections.** ~~AN~~ The department or the department's authorized agent shall reinspect an early childhood ~~facility program~~ or holder of a self-declaration issued a correction order under section 50-11.1-07.2 ~~must be reinspected~~, at the end of the period allowed for correction. If, upon reinspection, it is ~~determined~~ the department determines that the ~~facility program~~ or holder of a self-declaration has not corrected a violation identified in the correction order, the department shall mail to the program or the holder of a self-declaration, by certified mail, a notice of noncompliance with the correction order ~~must be mailed by certified mail to the facility~~. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

**SECTION 16. AMENDMENT.** Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.4. Fiscal sanctions.** ~~AN~~ If the department or the department's authorized agent issues a notice of noncompliance with a correction order to an early childhood ~~facility~~, if issued a notice of noncompliance with a correction order, ~~must be assessed~~ program or holder of a self-declaration, the department shall assess fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules ~~promulgated pursuant to~~ adopted by the department under subsection 2 of section 50-11.1-08. The department shall assess a fiscal sanction ~~must be assessed~~ for each day the ~~facility~~ facility early childhood program or holder of a self-declaration remains in noncompliance after the allowable time period for the correction of ~~deficiencies~~ violations ends and the sanction must continue as set forth in section 50-11.1-07.6 until a the department receives notice of correction is received by the department or the department's authorized agent in accordance with section 50-11.1-07.6. No indicating the violations are corrected. The fiscal sanction for a specific violation may not exceed ~~twenty five~~ one hundred dollars per day of noncompliance.

**SECTION 17. AMENDMENT.** Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.5. Accumulation of fiscal sanctions.** An early childhood facility program or holder of a self-declaration shall promptly notify the department or the department's authorized agent in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department or the department's authorized agent, the daily fiscal sanction assessed for the deficiency violation must stop accruing. The facility must be reinspected department or the department's authorized agent shall reinspect the early childhood program or premises out of which the holder of the self-declaration is operating within three working days after receipt of the notification. If, upon reinspection, it is determined the department determines that a deficiency violation has not been corrected, the department shall resume the daily assessment of fiscal sanction must resume and shall add the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility program or holder of the self-declaration. The department or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

**SECTION 18. AMENDMENT.** Section 50-11.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.6. Recovery of fiscal sanctions - Hearing.** Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator program or holder of a self-declaration makes written request to the department for an administrative hearing within ten days after the facility's receipt of early childhood program or the holder of the self-declaration receives the notice. If the appeal is unsuccessful or withdrawn, the daily assessment of fiscal sanctions must resume and the department shall add the amount of fiscal sanctions which otherwise would have accrued during the period prior to resumption to the total assessment due from the early childhood program or the holder of a self-declaration. The department or the department's authorized agent shall notify the early childhood program or the holder of a self-declaration of the resumption by certified mail.

**SECTION 19. AMENDMENT.** Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.8. Suspension of license, self-declaration, or registration document - Notification to parent, guardian, or custodian.**

1. The department may suspend the a license of any early childhood facility, self-declaration, or registration document during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05 premises of the licensed program, holder of the self-declaration, or registration, or of a staff member.
2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department shall notify the parent, guardian, or custodian of any child receiving care at the facility early childhood services when the that program's license of the facility, self-declaration, or registration document is suspended.

3. Upon the conclusion and disposition of the investigation of the facility program, the department shall notify the parent, guardian, or custodian of ~~the~~ each child receiving early childhood services of the disposition.

**SECTION 20. AMENDMENT.** Section 50-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-08. Minimum standards - Rules and regulations - Inspection by a governmental unit.** The department may:

1. Establish reasonable minimum standards for the operation of early childhood ~~facilities programs, self-declaration,~~ and the registration of in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make ~~such~~ reasonable rules and ~~regulations~~ for the regulation of early childhood services ~~as may be~~ necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
  - a. Inspect ~~any home or facility~~ the premises for which a license, self-declaration, or registration document is applied ~~for~~ or issued under this chapter; and
  - b. Certify to the department that the ~~home or facility premises of a program, holder of self-declaration, or registration document~~ meets the requirements of this chapter and the minimum standards prescribed by the department.

**SECTION 21. AMENDMENT.** Section 50-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-09. Revocation of license, self-declaration, or registration document.**

1. The department may revoke the license, self-declaration, or registration document of any early childhood ~~facility or the registration document of any in-home~~ services provider upon proper showing of any of the following:
  - a. Any of the applicable conditions set forth in ~~section~~ sections 50-11.1-04, 50-11.1-06, and section 9 of this Act as prerequisites for the issuance of the license, self-declaration, or registration document no longer exist.
  - b. The licensee, holder of a self-declaration, or registrant is no longer in compliance with the minimum standards prescribed by the department.
  - c. The license, self-declaration, or registration document was issued upon fraudulent or untrue representation.

- d. The licensee, holder of a self-declaration, or registrant has violated any rules of the department.
  - e. The licensee ~~or~~, holder of a self-declaration, registrant, or a household member of a home out of which early childhood services are provided has been found guilty of, or pled guilty to, an offense ~~determined by the department to have~~ determines has a direct bearing upon a ~~person's~~ an individual's ability to serve the public as a licensee, a holder of a self-declaration, or a registrant.
  - f. The licensee, holder of a self-declaration, or registrant has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the ~~licensee~~ individual has not been sufficiently rehabilitated.
  - g. The department may consider the early childhood services history of the licensee, holder of a self-declaration, or registrant in determining revocation of a license, self-declaration, or in-home registration document.
2. The department shall notify, in writing, the parent, ~~guardian~~, or ~~custodian~~ of each child receiving ~~care in~~ early childhood services from the facility early childhood services provider that is the subject of the issuance of a revocation notice.

**SECTION 22. AMENDMENT.** Section 50-11.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-10. Denial or revocation of license, self-declaration, or registration certificate document - Administrative hearing.** Before the department may deny any application for a license, self-declaration, or registration ~~certificate document~~ under the provisions of this chapter ~~may be denied~~ or before ~~revocation of the department may revoke~~ any license, self-declaration, or registration ~~certificate may take place, written charges as to document, the department shall provide a written notice to the applicant, licensee, or holder of the self-declaration or registration document of the reasons therefor must be served upon the applicant, licensee, or registrant for the denial or revocation.~~ The applicant, licensee, holder of a self-declaration, or registrant ~~has the right to~~ may request an administrative hearing appealing the denial or revocation in the manner provided in chapter 28-32 if ~~written. The applicant, licensee, holder of a self-declaration, or registrant shall make a request for the hearing is made to the department within ten days after service receipt of the written charges~~ notice of denial or revocation from the department.

**SECTION 23. AMENDMENT.** Section 50-11.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-11. Public agency purchase of early childhood services.** No agency of state or local government may purchase early childhood services, including care provided by or in the home of a relative, unless the early childhood ~~facility or early childhood services attendant program~~ is licensed, registered, or approved by the department.

**SECTION 24. AMENDMENT.** Section 50-11.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-11.1. Resource and referral ~~program~~ services - Authority of department to make grants - Federal funds - ~~Program~~ components Components.**

1. The department may make grants to public and private nonprofit entities for the planning, establishment, expansion, improvement, or operation of early childhood services. Public or private entities may apply to the department for funding. Applicants shall apply for ~~such~~ grants on forms provided by the department. Applications for grants using funds received by the state under subsection 2 must include assurances that federal requirements have been met.
2. The department shall submit an application annually to the United States secretary of health and human services for the purpose of obtaining the state's allotment of funds authorized under chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9871-9877] or under any subsequent federal law providing funding for child care and development programs.
3. Each ~~program must~~ entity providing early childhood resource and referral services shall identify all existing related early childhood services through information provided by all relevant public and private entities in the areas of service and must develop a resource file of ~~the~~ these services which must be maintained and updated at least quarterly. The services must include early childhood services ~~and service providers as defined~~ as identified in section 50-11.1-02.
4. Each ~~program entity~~ entity providing early childhood resource and referral services ~~must~~ shall establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection ~~3~~ 4 of section 50-11.1-07, affords parents maximum access to all referral information, and includes telephone referral available for no less than twenty hours per week ~~and access via the internet~~. Each ~~program entity~~ shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.
5. All early childhood services resource and referral ~~programs must~~ entities shall maintain documentation of the number of calls and contacts ~~to the program~~. A ~~program~~ received and may collect and maintain the following information:
  - a. Ages of children served.
  - b. Time category of child care request for each child.
  - c. Special time category, such as nights, weekends, or swing shift.
  - d. The reason ~~that the~~ child care is needed.
6. Each ~~program must~~ early childhood services resource and referral entity shall have available, as an educational aid to parents, information on available parent, early childhood, and family education programs in the community and information on aspects of evaluating the quality and suitability of early childhood services, including licensing regulation,

financial assistance availability, child abuse reporting procedures, and appropriate child development information.

7. A ~~program~~ may child care resource and referral entity shall provide technical assistance to existing and potential providers of all types of early childhood services and to employers. This assistance must include:
  - a. Information on all aspects of initiating new early childhood services, including licensing, zoning, program and budget development, and assistance in finding information from other sources;
  - b. Information and resources which help existing early childhood service providers to maximize their ability to serve the children and parents of their community;
  - c. Dissemination of information on current public issues affecting the local and statewide delivery of early childhood services;
  - d. Facilitation of communication between existing early childhood service providers and child-related services in the community served;
  - e. Recruitment of licensed providers; ~~and~~
  - f. Options, and the benefits available to employers utilizing the various options, to expand child care services to employees.
8. Services prescribed by this section must be designed to maximize parental choice in the selection of early childhood services and to facilitate the maintenance and development of such services and resources.

**SECTION 25. AMENDMENT.** Section 50-11.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-12. Violation of chapter or ~~regulations~~ rules - Injunction.** The department may seek injunctive action against an early childhood ~~facility~~ program, or holder of a self-declaration, or in-home registration document in the district court through proceedings instituted by the attorney general on behalf of the department if:

1. There is a violation of this chapter or a rule adopted ~~thereunder~~ under this chapter; or
2. An early childhood ~~facility~~ program or holder of a self-declaration, or in-home registration document, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction does not pay a properly assessed fiscal sanction in accordance with section 50-11.1-07.6.

**SECTION 26. AMENDMENT.** Section 50-11.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-13.1. Penalty for provision of services - When applicable.** A ~~person~~ An individual who provides early childhood services to any child, other than a child who is a member of that ~~person's~~ individual's household, is guilty of a class B misdemeanor if:

1. Those services are provided after that ~~person~~ individual is required to register ~~under section 42-1-32-45~~ as a sexual offender;
2. The department has denied that ~~person's~~ individual's application for licensure, or self-declaration, or registration to provide early childhood services or has revoked that ~~person's~~ individual's license, self-declaration, or certificate of registration document to provide early childhood services following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that ~~person~~ individual; or
3. The ~~person~~ individual allows another ~~person~~ individual to be in the presence of the child receiving ~~the~~ early childhood services if that other ~~person~~ individual is required to register ~~under section 42-1-32-45~~ as a sexual offender or has had an application for licensure, self-declaration, or registration to provide early childhood ~~service~~ services denied or revoked by the department following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that other ~~person~~ individual.

**SECTION 27. REPEAL.** Section 50-11.1-03.1 of the North Dakota Century Code is repealed.

**SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS - BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 29. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$210,856, or so much of the sum as may be necessary, and \$82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 30. EXPIRATION DATE.** The increase in the penalty identified in subsection 7 of section 5 of this Act is effective through July 31, 2011, and after that date is ineffective.

Approved May 7, 2009  
Filed May 19, 2009

**CHAPTER 423****HOUSE BILL NO. 1472**

(Representatives Thoreson, Berg, Hofstad, Wieland)  
(Senators Flakoll, Horne)

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to the creation of an early childhood services advisory board; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Early childhood services advisory board - Membership - Duties.**

1. The early childhood services advisory board is composed of seven members appointed by the director of the department. The members of the board must include a broad-based geographically distributed membership. The term of office is four years expiring on July thirty-first with no more than two terms expiring in any one year. Of the first members appointed, one member must be appointed for a term of one year, two members must be appointed for terms of two years, two members must be appointed for terms of three years, and two members must be appointed for terms of four years. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as the original appointment, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. A member also is entitled to be reimbursed up to one hundred dollars per day for the expenses incurred by the member which relate to the hiring of a substitute early childhood services provider in order that the member may attend meetings and perform the member's official duties.
2. The early childhood services advisory board shall:
  - a. Advise the department as the department conducts a review of all early childhood services rules, a review of which the department shall complete before August 1, 2010;
  - b. Upon the completion of the department's review, with the assistance of the department, conduct an analysis of and make recommendations to the department regarding the department's review of the early childhood services rules, however, final approval of any administrative rule changes must be completed through the administrative rulemaking process set forth in chapter 28-32; and
  - c. On an ongoing basis, make recommendations to the department regarding changes and revisions to the early childhood services

rules. The recommendations, the goal of which is to streamline and improve the quality of the early childhood services process, must seek to balance the need for rules that ensure safe quality child care with the need to revise or eliminate rules that create unnecessary barriers for early childhood service providers.

3. To accommodate the process set forth in subdivisions a and b of subsection 2 , any rules the department adopts in response to legislation enacted in 2009 are exempt from the deadline for rules to implement statutory changes set forth in section 28-32-07, however, those rules must be in effect before January 1, 2011.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2013, and after that date is ineffective.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 424****HOUSE BILL NO. 1095**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-11.3-02, 50-12-02, 50-12-03, and 50-12-03.1 and subsection 1 of section 50-12-03.2 of the North Dakota Century Code, relating to criminal history record investigations for foster care licensure or licensure as a child-placing agency.

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

**SECTION 1. AMENDMENT.** Section 50-11.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.3-02. Criminal history record investigation - Effect of results.**

1. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:
  - a. (1) Child abuse or neglect;
  - b. (2) Domestic violence, as that term is used in chapter 14-07.1;
  - c. (3) A crime in which a child was a victim, including the creation or distribution of child pornography; or
  - d. (4) A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
2. b. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
  - a. (1) A crime involving violence not described in ~~subsection 4~~ subdivision a;
  - b. (2) Any drug-related offense; or
  - c. (3) An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in ~~subsection 4~~ subdivision a;
3. c. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in ~~subsection 2~~ subdivision b if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections,

without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

- 4- d. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in ~~subsection 2~~ subdivision b or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.
2. The department, in accordance with section 50-11-02, may adopt rules, using this section as a minimum requirement, to determine whether to deny or revoke a foster care facility's license, in accordance with section 50-11-07, if that facility houses or employs an individual who has a criminal record.
3. The department, in accordance with chapter 50-12, may adopt rules, using this section as a minimum requirement, to determine whether an individual or an individual's home is suitable for the adoption of any child through a child-placing agency.

**SECTION 2. AMENDMENT.** Section 50-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-02. Child-placing agency licensed - Rules.** Every child-placing agency shall secure a license from the department of human services. The department shall adopt rules establishing the requirements for licensure as a child-placing agency.

**SECTION 3. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03. Requirements for ~~license licensure and employment~~ - Term - Moral or religious conviction not bar to licensure or employment.** The department of human services shall issue licenses for the conduct of child-placing agencies upon application. A child-placing agency shall require a criminal history record investigation on the owner and each employee of a child-placing agency who has direct contact with families, with children, or with both. The department of human services shall consider any criminal history record information available about the owner at the time a licensing decision is made and about an employee prior to the owner or the employee having direct contact with families, with children, or with both. Licenses must be granted for a period not exceeding two years. Licenses must be issued to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded. The department of human services may not deny a license because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.

**SECTION 4. AMENDMENT.** Section 50-12-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03.1. Conviction not bar to licensure or employment - Exceptions.** Conviction of an offense does not disqualify a person from licensure or employment

under this chapter unless the department of human services determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or ~~proprietor~~ employee of a child-placing agency, or that, following the person's conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 5. AMENDMENT.** Subsection 1 of section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in chapter 50-11.3 or determined by the department to have a direct bearing upon the person's ability to provide a suitable home for placement of any child, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.

Approved March 5, 2009  
Filed March 5, 2009

**CHAPTER 425****HOUSE BILL NO. 1418**

(Representatives Hawken, Martinson, Mueller)  
(Senators Fiebiger, Krebsbach, Wardner)

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to early childhood care workforce development, child care capacity, and quality improvement for early childhood facilities; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Workforce development - Quality improvement - Technical assistance - Capacity building.**

1. The department shall provide voluntary, progressive training opportunities leading to credentials and shall provide supports for the early childhood care and education workforce. The department shall implement a registry to track workforce participation.
2. The department shall implement a voluntary quality improvement process for licensed early childhood facilities. The department may provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility. The department may provide technical assistance and support to an early childhood facility that applies for quality improvement and may provide financial incentives to an early childhood facility that sustains and increases program quality. The department may contract with a private, nonprofit agency to provide technical assistance under this subsection.
3. The department may provide supports and incentives to build child care capacity, including:
  - a. Technical assistance and support to individuals who want to establish a new program or expand existing capacity to include information on needs assessments, regulatory processes, facility design and furnishings, startup and operating budgets, staffing patterns, curriculum evaluation, and development of business plans.
  - b. Grants to programs with a viable business plan to support early childhood facility development and expansion in areas with a demonstrated need.
4. The department shall coordinate with other state agencies as necessary to implement the provisions of this section.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys from federal funds made available to the state from federal action to provide funding to the states to stimulate the national economy or to address state fiscal recovery and other income, the sum of \$3,644,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing programs associated with early childhood care services under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. ADDITIONAL FUNDS.** Subject to approval by the emergency commission and budget section, the department of human services may accept and spend federal or other funds in excess of those funds appropriated in section 2 of this Act for early childhood care programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 426****SENATE BILL NO. 2363**

(Senators Hogue, Nodland)  
(Representative L. Meier)

AN ACT to amend and reenact subsection 3 of section 50-22-02, subsection 1 of section 50-22-02.1, and sections 50-22-04 and 50-22-05 of the North Dakota Century Code, relating to registration of charitable organizations and professional fundraisers and to annual reports by charitable organizations; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-22-02 of the North Dakota Century Code is amended and reenacted as follows:

3. An officer of the charitable organization must execute the registration statement and must ~~acknowledge~~ certify that the registration statement has been executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement. The executing officer also must certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume, responsibility for determining matters of policy and have supervised, and will continue to supervise, the finances of the charitable organization.

**SECTION 2. AMENDMENT.** Subsection 1 of section 50-22-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not act as a professional fundraiser subject to this chapter unless that person has registered with the secretary of state. The registration statement must be in writing, ~~under oath~~, in the form prescribed by the secretary of state and must be accompanied by a fee of one hundred dollars. The registration information must be available to the public as a matter of public record. Each registration expires on September first unless, prior to September first, the public fundraiser registers by filing a new registration statement, accompanied by a fee of one hundred dollars. The forms containing the information ~~must be verified under oath and~~ must include the following:
  - a. The name of the professional fundraiser.
  - b. The street and mailing address and telephone number of the professional fundraiser.
  - c. The type of fundraising to be conducted in this state.
  - d. The name of the auditor, accountant, employee, agent, or other person who maintains or possesses the professional fundraiser's records.

- e. A list of all officers, agents, or employees to work under the applicant's direction.
- f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

**SECTION 3. AMENDMENT.** Section 50-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-22-04. Information required to be filed annually.**

1. Every charitable organization that is required to file or that files a registration statement pursuant to section 50-22-02 shall file an annual report along with a ten dollar fee with the secretary of state on or before September first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used.

2. The annual report must be filed on forms prescribed by the secretary of state and must include a financial statement covering the immediately preceding twelve-month period of operation. An officer of the charitable organization shall execute the financial statement which must include a balance sheet, statement of income and expense, and statement of functional expenses. The financial statement must be filed on or attached to forms furnished by the secretary of state and must be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of the allocations:
  - a. Total receipts and total income from all sources;
  - b. Cost of management and general;
  - c. Program services;
  - d. Cost of fundraising;
  - e. Cost of public education;
  - f. Funds or properties transferred out of state with explanation as to recipient and purpose, unless the information is not reasonably available, in which case the charitable organization may, with the approval of the secretary of state, provide a reasonable estimate of the amounts transferred;



Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the charitable organization or professional fundraiser is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser, or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other relief the court determines appropriate, including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of registration under this chapter for a period of up to five years. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 427****HOUSE BILL NO. 1477**

(Representatives Carlson, Boucher)

(Senators Stenehjem, O'Connell)

(At the request of the Governor)

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to the exempt amount of designated pre-need funeral service contracts in considering eligibility for medical assistance.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.** In determining eligibility for medical assistance, the department of human services may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which total ~~five~~ six thousand dollars or less designated by the applicant or recipient as set-aside to pay for the applicant's or recipient's funeral. An applicant or recipient designates a prepayment or deposit for that applicant's or recipient's burial by providing funds that are to be used for the funeral or burial expenses of the applicant or recipient. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral pre-need contracts, prepayments, or deposits. Interest or earnings retained in a funeral fund also may not be considered as an available resource. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that funds maintained in accordance with this section total less than ~~five~~ six thousand dollars.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 428****HOUSE BILL NO. 1157**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to recovery from the estate of a full-benefit dual-eligible medical assistance recipient.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of the last illness, other than those incurred by medical assistance;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5;
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
  - g. Claims made under subsection 4.
2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
4.
  - a. ~~The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.~~
  - b. ~~In each calendar year following determination of an amount under subdivision a, the claims A claim of the department of human services made against the decedent's estate of a recipient of medical assistance who was a full-benefit dual-eligible recipient, or against the decedent's estate of the spouse of a deceased recipient of medical assistance who was a full-benefit dual-eligible recipient, must include a claim for an amount equal to the amount determined under subdivision a multiplied times the number of full or partial months required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, which reasonably may be attributable to benefits paid on behalf of the deceased recipient in a month during which the deceased recipient received medical assistance under this chapter and was eligible for medicare.~~
5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of human services has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
7. For purposes of this section:
  - a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and

- 
- b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

Approved April 16, 2009

Filed April 17, 2009

**CHAPTER 429****SENATE BILL NO. 2158**

(Senators J. Lee, Warner, Dever)  
(Representatives Hofstad, Kempenich, Potter)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance services provided by advanced registered nurse practitioners.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Medical assistance - Services provided by advanced registered nurse practitioners.** The medical assistance program must recognize advanced registered nurse practitioners as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the advanced registered nurse practitioner as a primary care provider under the medical assistance program must be within the scope of the advanced registered nurse practitioner's license.

**SECTION 2. DEPARTMENT TO SUBMIT AMENDED PLAN.** Within thirty days of the effective date of section 1 of this Act, the department of human services shall submit for approval an amended state plan to implement section 1 of this Act.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 430****HOUSE BILL NO. 1303**

(Representatives Kreidt, Bellew, Heller, Uglem, Wieland)  
(Senator Dever)

AN ACT to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to factors considered in determining nursing home rates.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-06. Rate determination.**

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
  - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
  - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 431

### HOUSE BILL NO. 1307

(Representatives Kreidt, Bellew, Heller, Uglem, Wieland)  
(Senator Dever)

AN ACT to amend and reenact section 50-24.4-07 of the North Dakota Century Code, relating to nonallowable costs in nursing home ratesetting.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.4-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.4-07. Nonallowable costs.**

1. The following costs may not be recognized as allowable: political contributions; salaries or expenses of a lobbyist, as defined in section 54-05.1-02, for lobbying activities; advertising designed to encourage potential residents to select a particular nursing home; fines and penalties; legal and related expenses for unsuccessful challenges to decisions by governmental agencies; memberships in sports, health, or similar social clubs or organizations; and costs incurred for activities directly related to influencing employees with respect to unionization. The department ~~shall~~ by rule shall exclude the costs of other items or services not directly related to the provision of resident care.
2. Nonallowable costs include the education expense unless:
  - a. The education was provided by an accredited academic or technical educational facility;
  - b. The education expense was for materials, books, or tuition;
  - c. The facility claims the education expense, annually, in an amount not to exceed the lesser of one-half of the individual's education expense or three thousand seven hundred fifty dollars; and
  - d. The amount of education expense claimed for an individual does not exceed fifteen thousand dollars in the aggregate.
3. The education expense may be claimed the year in which it is expended.
4. For any individual who receives education assistance, the facility shall enter a contract with the individual which stipulates a minimum commitment to work for the facility as well as a repayment plan if the individual does not fulfill the contract obligations.
5. An individual who receives education assistance shall commit to a minimum of one thousand six hundred sixty-four hours of employment after completion of the educational program for each year education assistance was provided by the facility.

6. The facility shall report the education expense separately on the facility's cost report. The expense is allowed as a passthrough and is limited only by the fifteen thousand dollar maximum per individual.
7. If an individual defaults on a contract and education expenses for the individual have previously been claimed in any report year, the facility shall report the amount of repayment on the facility's cost report in the report year in which the default occurs.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 432

### HOUSE BILL NO. 1433

(Representatives S. Meyer, N. Johnson, Schatz, Wald)  
(Senators Nodland, Wardner)

AN ACT to amend and reenact section 50-24.4-16 of the North Dakota Century Code, relating to nursing home rates; to provide an appropriation; to provide legislative intent; to provide an effective date; to provide an expiration date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.4-16. Special rates.**

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the limits of any cost category, the department shall establish procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than eighteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up for periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities.
3. Notwithstanding section 50-24.4-19, the department shall provide for a special care rate to be paid to a nursing home that has a capacity of fewer than thirty-one licensed beds, was not previously a hospital with critical access designation after May 31, 2009, and is owned and operated by a nonstate governmental unit.
  - a. To qualify for a special care rate, a nursing home shall document that the nursing home's allowable costs are in excess of the standard nursing home rates that are otherwise established in accordance with this chapter and shall demonstrate to the department's satisfaction that access to nursing home services may be jeopardized if additional reimbursement is not provided.
  - b. The special care rate established in accordance with this subsection may not exceed the lesser of the difference between the nursing home's costs per medical assistance day of care and the standard medical assistance nursing home per diem rates established in accordance with this chapter or the medical assistance upper payment limit established in accordance with federal regulations.

- c. For a new nursing home, the department shall establish an interim special care rate that must be in effect for no fewer than ten months and no more than eighteen months. Costs for the period in which the interim special care rate is in effect must be used to establish a final special care rate.
- d. The matching funds for the special care rate must be from municipal or county funds.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$28,761, or so much of the sum as may be necessary, and from special funds derived from federal and other funds, the sum of \$337,114, or so much of the sum as may be necessary, to the department of human services for the purpose of funding a special care rate for qualifying nursing homes, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that before a political subdivision may provide local matching funding for the special care rate for qualifying nursing homes, the governing body of the political subdivision shall submit the question for approval of the funding from the general fund of the political subdivision to the qualified electors of the political subdivision.

**SECTION 4. CONTINGENT EFFECTIVE DATE.** This Act is contingent on the state department of health certifying to the legislative council, before April 16, 2009, that Richardton memorial hospital has notified the state department of health that the hospital is releasing the hospital's critical access designation.

**SECTION 5. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2011, and after that date is ineffective.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 433****HOUSE BILL NO. 1385**

(Representatives Weisz, Nelson, Pollert)  
(Senators Erbele, Nething)

AN ACT to amend and reenact sections 50-24.6-02 and 50-24.6-04 of the North Dakota Century Code, relating to the drug use review board and the prior authorization program.

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

**SECTION 1. AMENDMENT.** Section 50-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-02. Drug use review board.**

1. The board is established within the department for the implementation of a drug use review program.
2. The board consists of ~~sixteen~~ seventeen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have participated in programs in which prior authorization is used. The appointed members of the board must be:
  - a. Four physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, appointed by the North Dakota medical association;
  - b. Two physicians licensed in this state and actively engaged in the practice of medicine, appointed by the executive director of the department;
  - c. Four pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the North Dakota pharmaceutical association;
  - d. Two pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the executive director of the department;
  - e. One individual who represents consumer interests, appointed by the governor; ~~and~~
  - f. One pharmacist or physician representing the brand pharmaceutical industry appointed by the pharmaceutical research and manufacturers of America; and

- g. One pharmacist or physician representing the generic pharmaceutical industry appointed by the generic pharmaceutical association.
3. ~~Appointed board members shall serve staggered three-year terms. Two physicians and two pharmacists must be initially appointed for two-year terms, and two physicians and two pharmacists must be initially appointed for one-year terms.~~ An appointed member may be reappointed for a period not to exceed three 3-year terms. A vacancy on the board must be filled for the balance of the unexpired term from the appropriate board category as provided under subsection 2. The executive director of the department may replace an appointed member of the board who fails to attend three consecutive meetings of the board without advance excuse or who fails to perform the duties expected of a board member. The pharmaceutical industry representative is a representatives are nonvoting board member members.
  4. Voting board members shall select a chairman and a vice chairman on an annual basis from the board's voting membership.
  5. The board shall meet in person at least once every three months and may meet at other times by teleconference or electronically at the discretion of the chairman. A board member is entitled to receive from the department per diem compensation and reimbursement of expenses as determined by the department, except that no compensation under this section may be paid to any board member who receives compensation or salary as a state employee or official.

**SECTION 2. AMENDMENT.** Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-04. (Effective through July 31, 2009) Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and

utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.

3. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert of ~~AB-rated, or brand name drugs with a~~ generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize ~~or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses, such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:~~
  - a. ~~Acquired immune deficiency syndrome or human immunodeficiency virus; and~~
  - b. ~~Cancer~~ the following medication classes:
    - a. Antipsychotics;
    - b. Antidepressants;
    - c. Anticonvulsants;
    - d. Antiretrovirals, for the treatment of human immunodeficiency virus;
    - e. Antineoplastic agents, for the treatment of cancer; and
    - f. Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder.
4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
  - a. Establish policies and procedures necessary to implement the prior authorization program.
  - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
  - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

**(Effective after July 31, 2009) Prior authorization program.**

4. ~~The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance~~

recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:

- a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - e. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
  3. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
  4. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
    - a. Establish policies and procedures necessary to implement the prior authorization program.
    - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
    - e. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

Approved May 1, 2009  
Filed May 5, 2009

**CHAPTER 434****SENATE BILL NO. 2097**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 3 of section 50-25.1-02 and section 50-25.1-11 of the North Dakota Century Code, relating to the definition of a sexually abused child and to who may receive confidential reports of child abuse and neglect.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in subdivision a of subsection 1 of section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare ~~to any act, or by any individual who acts~~ in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.

**SECTION 2. AMENDMENT.** Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-11. Confidentiality of records - Authorized disclosures.** ~~All reports~~ A report made under this chapter, as well as any other information obtained, ~~are~~ is confidential and must be made available to:

1. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information ~~in order~~ to determine whether to place the child in protective custody.
3. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
4. Any person who is the subject of a the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.
5. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.

6. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information identifying the subjects of a report as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. ~~Parents~~ A parent or a legally appointed guardian of a the child who is identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making reports the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

Approved May 1, 2009  
Filed May 4, 2009

**CHAPTER 435****HOUSE BILL NO. 1263**

(Representatives Kreidt, Metcalf, Pietsch, Weisz)  
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 50-32 of the North Dakota Century Code, relating to duties of assisted living facilities; and to provide for a legislative council study.

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

**SECTION 1.** A new section to chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

**Assisted living facilities - Duties - Educational requirements.**

1. Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.
2. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. The assisted living facility shall require all direct care staff to receive annual education or training in the areas of:
  - a. Resident rights;
  - b. Fire and accident prevention and training;
  - c. Mental and physical health needs of tenants;
  - d. Behavior problems and prevention; and
  - e. Control of infection, including universal precautions.
3. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:
  - a. An initial evaluation to meet tenancy criteria;
  - b. The tenancy agreement signed by the tenant or the tenant's legal representative;
  - c. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; and
  - d. An itemized list of services provided for the tenant.

4. Before hiring, the assisted living facility shall conduct a reference and previous employment check and a check of applicable registries of each applicant being considered for employment at the facility.
5. At least once every twenty-four months, each assisted living facility shall conduct a consumer satisfaction survey. The assisted living facility shall provide each tenant with a copy of the results of the survey.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - BASIC CARE AND ASSISTED LIVING FACILITIES.** During the 2009-10 interim, the legislative council shall study how the state laws and administrative rules regulate basic care and assisted living facilities. The study must include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 436****HOUSE BILL NO. 1090**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to child care assistance; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** For the purposes of this chapter:

1. "Allowable activities" means paid work, job search, attending job training or an education program, any activity in the job opportunity and basic skills program, transportation time related to the activities, temporary illness or incapacity of a current recipient, and temporary illness of the child.
2. "Approved relative" means an individual provider related to a child in that provider's care by marriage, blood, or court decree as a grandparent, step-grandparent, great grandparent, step-great grandparent, aunt, step-aunt, uncle, step-uncle, sibling, or step-sibling, who has been approved to care for specific children in the provider's own home, but does not mean a sibling provider who resides in the home of a child in that provider's care.
3. "Caretaker" means a child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request, but does not mean a provider.
4. "Child care assistance unit" means all members of the caretaker's immediate household, including a child through the month of that child's nineteenth birthday, and any parent or stepparent of a child, including an acknowledged or adjudicated father of one or more children in the household, but does not mean any other person who is not acting in the stead of a parent, a child who is nineteen years of age or older, a child for whom the household receives foster care payments, or a minor parent of a child in the household unless the minor parent also requires child care or is incapable of caring for the child.
5. "Child care center" has the meaning provided in chapter 50-11.1.
6. "County agency" means any county social services office.
7. "Department" means the department of human services.
8. "Family child care" has the meaning provided in chapter 50-11.1.

9. "Group child care" has the meaning provided in chapter 50-11.1.
10. "Provider" means an individual who is eighteen years of age or older, licensed as a provider in a family child care, group child care, or child care center, with a self-declaration as a provider of early childhood services who requires no license, registered as a child care provider by a tribal entity, or an approved relative, who meets criteria established by the jurisdiction with authority to regulate child care services.
11. "Recipient" means an individual who is receiving child care assistance.
12. "Tribal entity" means an organization authorized by the government of an Indian tribe within North Dakota to license, register, or otherwise recognize a child care provider operating within the jurisdiction of that Indian tribe.
13. "Work":
  - a. Means any paid employment and any self-employment providing commensurate income; and
  - b. Does not mean any unpaid activity except:
    - (1) With respect to a caretaker who is involved in job opportunity and basic skills or tribal native employment works required by temporary assistance for needy families, any approved activity for the program; and
    - (2) When a state has been determined to have a major disaster, activity by an individual who is residing in the disaster area and involved in unpaid work activities, including the cleaning, repair, restoration, and rebuilding of homes, businesses, and schools.

**Child care assistance - Application for benefits - Applicant's duty to establish eligibility - Decisions - Rules.**

1. An individual desiring child care assistance or an individual seeking assistance on behalf of another individual may apply for child care assistance. An applicant shall submit a request for child care assistance in writing to a county agency on a form prescribed by the department. The applicant shall complete, sign, and date the application. Eligibility begins on the first day of the month in which a signed and dated application is received by the county agency. Eligibility may begin on the first day of the month prior to the month in which a signed and dated application is received by the county agency, if the applicant requests child care assistance for that month and demonstrates eligibility in that month.
2. The applicant shall provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the age, verification of relative relationship, citizenship or resident alien status of the children, verification of participation in an allowable activity, and financial eligibility.

3. An eligibility decision must be made within fifteen days on child care assistance applications whenever possible. The county agency shall notify the applicant following a determination of eligibility or ineligibility.
4. The department shall establish rules for the administration of the child care assistance program, including rules on income requirements, appeals of eligibility determinations for child care assistance, closure of a child care assistance case, and a sliding scale fee schedule for child care assistance benefits and to establish and enforce standards against program fraud and abuse.

#### **Available benefits.**

1. The department shall pay child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families household or diversion assistance household. The department shall pay a portion of child care costs required as a result of participation in allowable activities by the caretaker based on family size and countable income by applying a sliding fee schedule established under rules to be adopted by the department.
2. Subject to the availability of funding, the department may expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a one-year, two-year, or four-year degree or certificate. If a child care assistance unit includes two parents, child care assistance may be paid with respect to any child only during times that both parents are engaged in an allowable activity.

**Caretaker temporarily out of the home.** A caretaker, temporarily living apart from the remaining members of the child care assistance unit due to employment, education, training, medical care, incarceration, or uniformed service, is not considered absent from the home as long as the caretaker continues to function as caretaker, even if the level of support or care is reduced. The caretaker is counted as a child care assistance unit member and all gross countable income of that caretaker is included as child care assistance unit income used to determine the child care assistance payment.

**State of residence.** Only child care assistance units physically residing within the boundaries of the state are eligible for child care assistance.

#### **Approved relative provider.**

1. The department may approve a relative provider to provide care for specific children within a specified county. The department shall provide an approved relative provider with a provider identification number. An approved relative provider may provide care for no more than five children under the age of twelve or three children under the age of two, including the provider's children.
2. Before approving an individual as an approved relative provider, the department shall seek a criminal history record investigation as provided under section 50-11.1-06.2 and pursuant to section 12-60-24. The department shall consider any criminal history record information available at the time approval decision is made. A background check

must be completed for each adult living in the household of the prospective provider.

3. No payment may be made to a relative provider who is not an approved relative provider.

**Sliding fee schedule.**

1. The sliding fee schedule established by the department for inclusion within the child care and development fund state plan to determine eligibility, benefit levels, and the portion of the allowable child care cost that may be paid as a benefit under this chapter, must not:
  - a. Exceed available federal and non-federal funding; and
  - b. Provide benefits to a family whose income exceeds eighty-five percent of the state median income for a family of the same size.
2. Child care costs that exceed maximums established under this section are the responsibility of the family and may not be considered in determining the child care assistance program payment amount.

**Limitations on in-home child care benefits.** No benefits under this chapter may be provided for in-home child care unless:

1. A health professional provides written documentation demonstrating to the department's satisfaction that the child's health would be at risk if taken to an outside provider; or
2. A developmental disabilities case manager or a special education case manager provides written documentation demonstrating to the department's satisfaction that the child's disability is such that taking the child to an outside provider creates an undue hardship.

Approved May 1, 2009  
Filed May 5, 2009

# SALES AND EXCHANGES

## CHAPTER 437

### HOUSE BILL NO. 1184

(Representatives Delmore, DeKrey, Griffin, Kretschmar)  
(Senators Lyson, Schneider)

AN ACT to amend and reenact subsection 1 of section 51-31-04 of the North Dakota Century Code, relating to law enforcement reports for individuals who are the victims of identity theft.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 51-31-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual who has learned or reasonably suspects that the individual's personal identifying information has been unlawfully used by another, as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the individual's residence or any other jurisdiction in which any part of the offense occurred. The law enforcement agency shall take a report of the matter, provide the individual with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 438****HOUSE BILL NO. 1308**

(Representatives Koppelman, Griffin, Schatz)  
(Senators Andrist, Dever, Triplett)

AN ACT to amend and reenact subsection 2 of section 51-33-04 of the North Dakota Century Code, relating to temporary lifting of a security freeze; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 51-33-04 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A consumer reporting agency that receives a request by mail from a consumer to temporarily lift a freeze on a consumer credit file under this section shall comply with the request no later than ~~three~~ two business days after receiving the request unless the consumer fails to provide proper identification and the unique personal identification number or password provided by the credit reporting agency under section 51-33-03.
- b. A consumer reporting agency that receives a request by telephone or through a secure electronic connection from a consumer to temporarily lift a freeze on a consumer credit file under this section shall comply with the request no later than fifteen minutes after receiving the request unless the consumer fails to provide proper identification and the unique personal identification number or password provided by the credit reporting agency under section 51-33-03 or the consumer reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:
  - (1) A natural disaster or act of God, including fire, earthquake, or hurricane;
  - (2) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;
  - (3) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;
  - (4) Governmental action, including emergency orders or regulations or judicial or law enforcement action;
  - (5) Receipt of a removal request outside of normal business hours; or

(6) Maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled, unscheduled, or unexpected.

c. For the purposes of this section, "normal business hours" means from six a.m. to nine-thirty p.m., central standard time or central daylight time, seven days a week, excluding holidays other than Sundays.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective May 1, 2009.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 24, 2009  
Filed April 29, 2009

# SOCIAL SECURITY

## CHAPTER 439

### HOUSE BILL NO. 1117

(Government and Veterans Affairs Committee)  
(At the request of Job Service North Dakota)

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell certain property; and to declare an emergency.

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

**SECTION 1. Sale of property to job service North Dakota.** The state of North Dakota acting through job service North Dakota may sell and convey lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, block 9, Kelley and Fuller's second addition to Jamestown, Stutsman County, North Dakota. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Net proceeds from the sale must be used as authorized and directed by law.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 440****HOUSE BILL NO. 1118**

(Government and Veterans Affairs Committee)  
(At the request of Job Service North Dakota)

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell certain properties.

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

**SECTION 1. Sale of property by job service North Dakota.** The state of North Dakota acting through job service North Dakota may sell and convey Lot Six (6), Block Two (2), of Replat of Block One (1) of Westgate Village in the City of Fargo, Cass County, North Dakota. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Net proceeds from the sale must be used as authorized and directed by law.

**SECTION 2. Sale of property by job service North Dakota.** The state of North Dakota acting through job service North Dakota may sell and convey a tract of land located in the Southwest Quarter of the Southwest Quarter of Section Thirteen, Township One Hundred Fifty-seven North, Range Fifty-three West, Fifth p.m., more accurately described as follows: commencing at a point seventy-five feet North and one hundred thirty-nine and nine-tenths feet East of the Southwest corner of said Section Thirteen; thence continuing South 90 degrees 00 minutes 00 seconds East, and parallel to the South line of Section Thirteen, one hundred fifty feet; thence North 0 degrees 05 minutes 36 seconds East, two hundred eighty-three feet; thence North 90 degrees 00 minutes 00 seconds West, one hundred fifty feet; thence South 0 degrees 05 minutes 36 seconds West, two hundred eighty-three feet, to the point of beginning; now known as part of Lot 1, Block 1, State School First Addition, to the City of Grafton. Said tract of land contains 0.97 acres more or less. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Net proceeds from the sale must be used as authorized and directed by law.

Approved March 19, 2009

Filed March 24, 2009

**CHAPTER 441****SENATE BILL NO. 2078**

(Education Committee)

(At the request of Job Service North Dakota)

AN ACT to repeal section 52-02-02.1 of the North Dakota Century Code, relating to adult education and training student grants.

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

**SECTION 1. REPEAL.** Section 52-02-02.1 of the North Dakota Century Code is repealed.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 442****SENATE BILL NO. 2107**

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact section 52-04-01.1 of the North Dakota Century Code, relating to electronic filing of employer unemployment contribution and wage reports; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 52-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-01.1. Electronic filing of contribution and wage reports - Electronic payment of contributions - Assessments.** An employer that employs more than ~~ninety-nine~~ twenty-four employees at any time shall file contribution and wage reports by an electronic method approved by the bureau beginning with the calendar quarter in which the employer first employs more than ~~ninety-nine~~ twenty-four employees. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report as provided in section 52-04-11. All payers making payments on behalf of more than one employer shall make all payments electronically.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2009.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 443

### SENATE BILL NO. 2101

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact subsection 6 of section 52-04-05 and subsection 2 of section 52-04-06 of the North Dakota Century Code, relating to rounding of calculations for employer unemployment compensation contribution rates.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 6 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

6. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.
- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
  - (1) For each calendar year new employers must be assigned a rate that is ninety percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that

employer before October first of that year. All results calculated under this paragraph must be rounded to the nearest one-hundredth of one percent.

- (2) New employers in construction services must be assigned the negative employer maximum rate.
- (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.

**SECTION 2. AMENDMENT.** Subsection 2 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to one hundred twenty percent of the previous group's rate with a minimum increase of one-tenth of one percent and a maximum increase of four-tenths of one percent. The number of rate groups in the positive employer schedule must be ten. For each calendar year the bureau shall establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of one percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of one percent interval between the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05. All results calculated under this subsection must be rounded to the nearest one-hundredth of one percent.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 444****SENATE BILL NO. 2102**

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact subsection 2 of section 52-04-11 of the North Dakota Century Code, relating to the penalty for failure to submit employer contribution and wage reports; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 52-04-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Any employer who fails to submit to the bureau any employer's contribution and wage report by the date due shall pay the bureau a penalty equal to five percent of the contributions due for each month or part of a month until the report is submitted. The penalty for the first month of the first delinquent report in a calendar year may not be less than twenty-five dollars. The penalty for the first month of any subsequent delinquent reports in a calendar year may not be less than one hundred dollars. The penalty for subsequent months may not exceed twenty percent of contributions due. The maximum penalty imposed by this subsection may not exceed ~~two~~ five hundred ~~fifty~~ dollars for any single report. The penalty imposed by this subsection may be waived if the bureau determines that the failure to submit the report timely was caused by circumstances beyond the control of the employer.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 445****SENATE BILL NO. 2130**

(Government and Veterans Affairs Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to the federal advance interest repayment fund; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-22. Federal advance interest repayment fund - Continuing appropriation.** There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest collected on delinquent contributions, all penalties provided by the North Dakota unemployment compensation law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund also may be used for the purpose of paying building lease costs of office facilities leased by job service North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund may be used for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North

Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying building lease costs of office facilities leased by job service North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are appropriated for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 446****HOUSE BILL NO. 1362**  
(Representatives Grande, Kasper, Ruby)  
(Senators Klein, J. Lee, Triplett)

AN ACT to amend and reenact section 52-04-24 of the North Dakota Century Code, relating to unemployment compensation rates for staffing services.

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

**SECTION 1. AMENDMENT.** Section 52-04-24 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-24. Staffing services - Payment of unemployment insurance taxes.**

1. If a staffing service exclusively provides temporary staffing services, the staffing service is considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. If a staffing service provides temporary and long-term employee staffing services, the staffing service is subject to the reporting and tax requirements associated with the type of employee provided to the client company.
2. For the purposes of long-term employee staffing services provided by a staffing service, the staffing service shall:
  - a. Report quarterly the wages of all employees furnished to each client company and pay taxes on those wages at the client company's unemployment insurance tax rate, except as otherwise provided under subsection 3.
  - b. Maintain complete and separate records of the wages paid to employees furnished to each of the client companies. Claims for benefits must be separately identified by the staffing service for each client company.
  - c. Notify the agency of each client company's name and unemployment insurance account number and the date the staffing service began providing services to the client company. The staffing service shall provide the agency with the information required under this subdivision upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
  - d. Supply the agency with a copy of the agreement between the staffing service and the client company.
  - e. Notify the agency upon termination of any agreement with a client company, but no later than fifteen days from the effective date of the termination.

- f. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between the staffing service and a client company is terminated, the employees become the sole employees of the client company.
3. For the purposes of long-term employee staffing services provided by a staffing service, upon authorization of the agency, the staffing service may be considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. The agency may not make an authorization under this subsection unless one of the following requirements is met:
  - a. In the case of a client company unemployment insurance tax rate that is higher than the staffing services tax rate:
    - (1) The staffing service:
      - (a) Calculates the difference between the staffing service's tax rate and the client company's tax rate;
      - (b) Applies the difference to the wages to be earned by the employees furnished to the client company in the following completed calendar quarter; and
      - (c) Notifies the agency that such application would, if the staffing service's tax rate were applied to those same wages, cause a reduction in the tax due on those wages which does not exceed five hundred dollars.
    - (2) If the reduction under paragraph 1 exceeds five hundred dollars, at the written request of the staffing service, the agency may make a written determination that it is appropriate to allow the staffing service to use the staffing service's unemployment insurance tax rate. The agency shall respond to a request under this paragraph within fifteen days of receiving all required information.
  - b. The staffing service includes in its contract with the client company a requirement that if the client company's unemployment insurance tax rate is higher than the staffing service's tax rate, the client will arrange to make payment to the agency, pursuant to subsection 4 of section 52-04-06, in the amount necessary to cause the client company's unemployment insurance tax rate should it be recomputed to be determined by the agency to be equivalent to the staffing service's unemployment insurance tax rate. Before the agency makes an authorization under this subdivision, the agency actually must receive payment of the amount required to cause the determination that the client company has complied with this subdivision.
  - c. The staffing service demonstrates to the agency that the staffing service has entered an agreement with a client company that has an unemployment insurance tax rate that is, at the time of

execution of the contract, equal to or lower than the staffing service's tax rate.

4. If a staffing service enters a contract with a client company that has an unemployment insurance tax rate that is lower than the staffing service's tax rate, the agency shall determine the following year's tax rate for the staffing service by calculating a blended reserve ratio using the proportion of that client company's total wages paid for up to the previous six years to the total wages paid for up to the previous six years for all of that staffing service's client companies whose furnished workers are considered the staffing service's employees for unemployment insurance tax purposes pursuant to subsection 3.
5. Both a staffing service and client company are considered employers for the purposes of this title. Both parties to a contract between a staffing service and a client company are jointly liable for delinquent unemployment insurance taxes, and the agency may seek to collect such delinquent taxes, and any penalties and interest due, from either party. The agency shall send notices of rate determinations annually to the staffing service. This chapter does not modify or impair any other provisions of the contract between the staffing service and the client company not relating to the requirements of this subsection concerning liability for payment of taxes on the wages paid to workers furnished by the staffing service to the client company, and the means of determining the tax rate to be applied to those wages. Any report that relates to the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] which is required to be submitted to the federal internal revenue service regarding a staffing service must be submitted with the employer identification number of the staffing service.
6. The agency shall determine whether a person is a staffing service. If the agency determines a person is a staffing service, the agency may further determine if the person is a temporary staffing service. The agency's determination must be issued in writing, and within fifteen days of the date of issuance of that determination, a person aggrieved by that determination may appeal that determination. The appeal must be heard in the same manner and with the same possible results as all other administrative appeals under this title. In making a determination under this subsection, the agency may consider:
  - a. The number of client companies with which the staffing service has contracts;
  - b. The length of time the staffing service has been in existence;
  - c. The extent to which the staffing service extends services to the general public;
  - d. The degree to which the client company and the staffing services are separate and unrelated business entities;
  - e. The repetition of officers and managers between the client company and staffing service;
  - f. The scope of services provided by the staffing service;

- g. The relationship between the staffing service and the client company's workers;
  - h. The written agreement between the staffing service and the client company; and
  - i. Any other factor determined relevant by the agency.
7. The agency may require information from any staffing service, including a list of current client company accounts, staffing assignments, and wage information. A client company shall provide any information requested by the agency regarding any staffing service.

Approved April 9, 2009

Filed April 13, 2009

**CHAPTER 447****SENATE BILL NO. 2108**

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact section 52-06-01 of the North Dakota Century Code, relating to eligibility for unemployment compensation benefits.

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

**SECTION 1. AMENDMENT.** Section 52-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**52-06-01. Conditions required to be eligible for benefits.** An unemployed individual is eligible to receive benefits with respect to any week only if the bureau finds that:

1. The individual has made a claim for benefits with respect to such week in accordance with such regulations as the bureau may prescribe;
2. The individual has registered for work ~~at~~ and thereafter continued to ~~report at an employment office~~ complete all assigned services and report to a local office as required in accordance with such regulations as the bureau may prescribe, except that the bureau may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of the North Dakota unemployment compensation law; provided, that no such regulation shall conflict with section 52-06-03;
3. The individual is able to work and is available for suitable work and actively seeking work, provided:
  - a. That notwithstanding any other provisions in this section, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work; and
  - b. That no claimant may be considered ineligible in any week of unemployment for failure to comply with this subsection, if the failure is due to an illness or disability not covered by workforce safety and insurance and which occurred after the claimant has registered for work and no work has been offered the claimant which is suitable;

4. The individual has been unemployed for a waiting period of one week. No week may be counted as a week of unemployment for the purposes of this subsection:
  - a. Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits;
  - b. If benefits have been paid with respect thereto; and
  - c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02; and
5. The individual participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the bureau, unless the bureau determines that:
  - a. The individual has completed these services; or
  - b. There is justifiable cause for the claimant's failure to participate in these services.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 448****SENATE BILL NO. 2106**

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

AN ACT to amend and reenact subsections 1 and 2 of section 52-06-02 of the North Dakota Century Code, relating to overcoming disqualification from unemployment compensation benefits.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 52-06-02 of the North Dakota Century Code are amended and reenacted as follows:

1. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
  - a. Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
  - b. Has not left the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the

physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

2. For the week in which the individual has been discharged for misconduct in connection with the individual's most recent employment and thereafter until such time as the individual:
  - a. Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and

- b. Has not left the individual's most recent employment under disqualifying circumstances.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and was discharged for misconduct in connection with the claimant's employment or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding ten times the claimant's weekly benefit amount.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 449****HOUSE BILL NO. 1121**

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to the old-age and survivor insurance trust fund.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 52-09-20 of the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
- a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
  - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
  - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
  - c. (1) ~~Effective August 1, 2005, nine hundred thirty-three dollars and twenty-eight cents; or~~
  - (2) ~~Effective August 1, 2006 2009, nine hundred fifty-nine dollars~~ one thousand seven dollars and ninety-four cents.

Approved April 8, 2009  
Filed April 9, 2009

# SPORTS AND AMUSEMENTS

## CHAPTER 450

### SENATE BILL NO. 2215

(Senators Nething, Nelson)  
(Representatives DeKrey, Wrangham)

AN ACT to amend and reenact section 53-06.1-01, subsection 2 of section 53-06.1-12, and section 53-06.1-12.3 of the North Dakota Century Code, relating to the definition of games of chance, excise tax on licensed organizations, and interest penalty and estimated taxes on licensed organizations.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>168</sup> **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **53-06.1-01. Definitions.** As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, bingo cards excise tax, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.

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<sup>168</sup> Section 53-06.1-01 was also amended by section 1 of House Bill No. 1194, chapter 451.

5. "Distributor" means a person that sells, markets, or distributes equipment designed for use in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
13. "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and expenses to conduct the gaming activity.
14. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
- ~~44.~~ 15. "Permit" means a local permit or charity local permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
- ~~45.~~ 16. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
- ~~46.~~ 17. "Prize board" means a board used with pull tabs to award cash or merchandise prizes.

47. 18. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
48. 19. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a permit does not need to meet this definition.
49. 20. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
20. 21. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

<sup>169</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed on a licensed organization an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards. The tax must be paid to the attorney general when tax returns are filed.

**SECTION 3. AMENDMENT.** Section 53-06.1-12.3 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12.3. Interest, penalty, and estimated tax.**

1. Assessment of interest. If ~~an~~ a licensed organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve percent per annum computed from the original due date of the return through the date the tax is paid.

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<sup>169</sup> Section 53-06.1-12 was also amended by section 1 of House Bill No. 1317, chapter 453, and section 1 of Senate Bill No. 2091, chapter 454.

2. Assessment of penalty. If ~~an~~ a licensed organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not file a tax return by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.
3. The attorney general may require a licensed organization to make monthly estimated gaming and excise tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the organization's license. The attorney general may for good cause waive all or part of any interest or penalty and may waive any minimal tax.
4. If ~~an~~ a licensed organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming and excise taxes due according to the best information available and assess the taxes at not more than double the amount. Interest and penalty also must be assessed.
5. The attorney general may authorize ~~an~~ a licensed organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 451

### HOUSE BILL NO. 1194

(Representatives Keiser, DeKrey)  
(Senator Lyson)

AN ACT to amend and reenact subsection 7 of section 53-06.1-01 and subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to raffles conducted by certain organizations.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>170</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota or authorized by the secretary of state as a foreign corporation under chapter 10-33, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general. For purposes of this section, a foreign corporation authorized under chapter 10-33 is not an eligible organization unless authorized to conduct a raffle under chapter 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-08.

<sup>171</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more closely related organizations may have a license or permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a permit as follows:
  - a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels,

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<sup>170</sup> Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2215, chapter 450.

<sup>171</sup> Section 53-06.1-03 was also amended by section 1 of House Bill No. 1367, chapter 452.

twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed two thousand five hundred dollars and total prizes of all games that do not exceed twelve thousand dollars per year. These maximum prize amounts do not apply to raffles conducted under chapter 20.1-08. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a permit for games to be held at designated times and places.

- b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each permit. A permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.
- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming activity for any purpose that does not violate this chapter or gaming rules.
- d. An organization that has a charity local permit is restricted to one event per year and:
  - (1) May not pay remuneration to employees for personal services;
  - (2) Shall use chips as wagers;
  - (3) Shall redeem a player's chips for merchandise prizes or cash;
  - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
  - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 452****HOUSE BILL NO. 1367**

(Representative Wrangham)  
(Senator Triplett)

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to local permits and charity local permits.

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

<sup>172</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more closely related organizations may have a license or permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a permit as follows:
  - a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed ~~two~~ six thousand ~~five hundred~~ dollars, except that a raffle cash prize may not exceed the limits of section 53-06.1-10.1, and total prizes of all games ~~that~~ do not exceed twelve thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a permit for games to be held at designated times and places.
  - b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each permit. A permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.

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<sup>172</sup> Section 53-06.1-03 was also amended by section 2 of House Bill No. 1194, chapter 451.

- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming activity for any purpose that does not violate this chapter or gaming rules.
- d. An organization that has a charity local permit is restricted to one event per year and:
  - (1) May not pay remuneration to employees for personal services;
  - (2) Shall use chips as wagers;
  - (3) Shall redeem a player's chips for merchandise prizes or cash;
  - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
  - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 453****HOUSE BILL NO. 1317**

(Representatives Kretschmar, Delmore, Hawken)  
(Senators Bowman, Grindberg, Potter)

AN ACT to amend and reenact subsection 2 of section 53-06.1-12 of the North Dakota Century Code, relating to gaming and excise taxes; and to provide an effective date.

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

<sup>173</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of ~~four and one-half~~ three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards. The tax must be paid to the attorney general ~~when~~ at the time tax returns are filed.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>173</sup> Section 53-06.1-12 was also amended by section 1 of Senate Bill No. 2091, chapter 454, and section 2 of Senate Bill No. 2215, chapter 450.

**CHAPTER 454****SENATE BILL NO. 2091**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact subsections 4 and 5 of section 53-06.1-12 of the North Dakota Century Code, relating to gaming and excise taxes deposits and allocations.

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

<sup>174</sup> **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 53-06.1-12 of the North Dakota Century Code are amended and reenacted as follows:

4. Except as provided in subsection 5, the ~~state treasurer~~ attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
5. The ~~state treasurer~~ attorney general shall deposit three percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>174</sup> Section 53-06.1-12 was also amended by section 1 of House Bill No. 1317, chapter 453, and section 2 of Senate Bill No. 2215, chapter 450.

**CHAPTER 455****HOUSE BILL NO. 1551**

(Representative Boucher)

AN ACT to amend and reenact section 53-06.2-11 of the North Dakota Century Code, relating to taxes on pari-mutuel wagering; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. For wagering on live horse racing and simulcast wagering:
  - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two and one-half~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For account wagering:

- a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
- (1) Before eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:
    - (a) Two percent to the state treasurer to be deposited in the general fund.
    - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (c) One-half of one percent to the commission to be deposited in the purse fund.
    - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - (2) After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of Of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:
    - (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
    - (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
    - (c) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
    - (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered.
- (1) Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:
    - (a) Two and one-half percent to the state treasurer to be deposited in the general fund.
    - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (c) One-half of one percent to the commission to be deposited in the purse fund.

- (d) ~~One-half of one percent to the commission to be deposited in the racing promotion fund.~~
- (2) ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of~~ Of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:
  - (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
  - (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
  - (e) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
  - (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- 3. For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.
- 4. The licensee conducting wagering on live racing, simulcast wagering, or account wagering shall retain all other money in the pari-mutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
- 5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting pari-mutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under section 53-06.1-11.1.
- 6. The commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing

promotion fund for the payment of the commission's operating expenses.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable events occurring after June 30, 2009, and before July 1, 2013, and is thereafter ineffective.

Approved May 7, 2009

Filed May 19, 2009

# STATE GOVERNMENT

## CHAPTER 456

### HOUSE BILL NO. 1123

(Government and Veterans Affairs Committee)

(At the request of the Industrial Commission)

AN ACT to amend and reenact section 54-01-27 of the North Dakota Century Code, relating to the approval of state leases by the industrial commission.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-01-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-01-27. Lease of state-owned property.** Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held; ~~and must be approved by the industrial commission.~~ For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform

any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 457****HOUSE BILL NO. 1178**

(Representative DeKrey)

AN ACT to amend and reenact section 54-03-26 of the North Dakota Century Code, relating to the purchase of personal computers by members of the legislative assembly.

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

<sup>175</sup> **SECTION 1. AMENDMENT.** Section 54-03-26 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-26. Personal computers and associated software used by legislators - Fee - Continuing appropriation.**

1. Notwithstanding any other provision of law, a member of the legislative assembly who is assigned a computer may use that computer and its associated equipment and software for any use that is not in violation of section 16.1-10-02 upon payment of a computer usage fee established by the legislative council.
2. The legislative council may establish a policy under which a member of the legislative assembly who has paid a computer usage fee under subsection 1 may purchase the computer used by that member for the appraised or market value of the computer upon the replacement of the computer by the legislative council.
3. Any funds received by the legislative council through the sale of a computer under subsection 2 must be deposited in the legislative services fund in the state treasury.

Approved April 16, 2009  
Filed April 17, 2009

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<sup>175</sup> Section 54-03-26 was also amended by section 41 of House Bill No. 1436, chapter 482.

**CHAPTER 458****HOUSE BILL NO. 1030**

(Legislative Council)

(Employee Benefits Programs Committee)

AN ACT to amend and reenact section 54-06-30 of the North Dakota Century Code, relating to the state employee performance bonus program.

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

**SECTION 1. AMENDMENT.** Section 54-06-30 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-30. State employee performance bonus program - Criteria - Limitations.** State agencies may provide monetary performance bonuses to their employees under this section.

1. State agencies may pay bonuses under this section if:
  - a. The agency has had a written employee performance evaluation policy in place for more than one year before paying the bonus;
  - b. The written employee performance evaluation policy required in subdivision a must have at least three levels of performance criteria; and
  - c. The agency performance bonus program adopted under this section must be a written policy and must be communicated to each employee in the agency. Development of the written policy must include input from employees.
2. State employees are eligible to receive a bonus under this section only if:
  - a. The employee has held a position in state government for at least one year before a bonus is paid;
  - b. The employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus; and
  - c. The employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position.
3. An employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand dollars in bonuses per ~~biennium~~ fiscal year.
4. Agencies Except as provided in this subsection, agencies may pay bonuses under this section during a fiscal year to not more than the number of employees equal to twenty-five percent of the employees employed by the agency on July first at the beginning of each state

fiscal year. Upon a showing of special circumstances, North Dakota human resource management services may approve pay bonuses above the twenty-five percent limitation in this subsection. North Dakota human resource management services shall report any exceptions granted under this subsection to the budget section of the legislative council. Each agency must fund the performance bonus program from within its agency budget for salaries and wages.

5. Bonuses paid under this section may not be included in an employee's base salary for purposes of calculating any wage or salary increase.
6. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 459****HOUSE BILL NO. 1031**

(Legislative Council)

(Employee Benefits Programs Committee)

AN ACT to amend and reenact section 54-06-31 of the North Dakota Century Code, relating to state recruitment and retention bonus programs.

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

<sup>176</sup> **SECTION 1. AMENDMENT.** Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-31. State employee recruitment and retention bonus programs - Criteria - Limitations.** State agencies may develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
  - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
  - b. The agency has filed a copy of the written policy with the North Dakota human resource management services; and
  - c. The agency reports to the North Dakota human resource management services each bonus provided to an employee under the program.
2. State agencies must fund bonus programs from within the agency salaries and wages budget.
3. The North Dakota human resource management services shall periodically report to a legislative committee designated by the legislative council on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.
4. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.
5. As used in this section, a hard-to-fill occupation includes an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss

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<sup>176</sup> Section 54-06-31 was also amended by section 47 of House Bill No. 1436, chapter 482.

of the employee would result in significant replacement costs, the position is filled by key personnel, or the position has other unique recruitment or retention issues identified and documented by the appointing authority.

Approved March 5, 2009

Filed March 5, 2009

**CHAPTER 460****HOUSE BILL NO. 1029**

(Legislative Council)

(Employee Benefits Programs Committee)

AN ACT to create and enact four new sections to chapter 54-06 of the North Dakota Century Code, relating to state employee service awards, employer-paid tuition, and employer-paid professional organization membership and service club dues.

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

**SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**State employee service awards.** Each state agency, department, or institution may establish rules or policies for employee recognition and service award programs. Executive branch agencies having employees in classified service are subject to rules adopted by North Dakota human resource management services and approved by the state personnel board and the legislative council's administrative rules committee. Any other agency, department, or institution of the executive, legislative, or judicial branch may adopt similar rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each executive branch state agency, department, or institution, except an institution of higher education, having employees who are not in classified service and establishing rules or policies for employee recognition and service award programs shall submit the rules and policies to the office of management and budget for review and comment, and after addressing any comments of the office of management and budget, shall submit the rules and policies to the legislative council's administrative rules committee for approval. Within sixty days after the close of each biennial period, each state agency, department, or institution providing an employee service award under rules approved by the administrative rules committee shall file with the office of management and budget a report indicating the individuals receiving a service award, the amount paid, and a statement of the public purpose or benefit of the expenditures. Within ninety days after the close of each biennial period, the office of management and budget shall submit to the legislative council a report summarizing this information. An expenditure made under this section is deemed to be made for a public purpose and may not be construed as a gift for purposes of section 18 of article X of the Constitution of North Dakota.

**SECTION 2.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Employer-paid tuition.** Each state agency, department, or institution may establish rules or policies to provide employer-paid costs of training or educational courses, including tuition and fees, within budgetary constraints. Executive branch agencies having employees in classified service are subject to rules adopted by North Dakota human resource management services and approved by the state personnel board and the legislative council's administrative rules committee. Any other state agency, department, or institution of the executive, legislative, or judicial branch may adopt rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each executive branch

state agency, department, or institution, except an institution of higher education, having employees who are not in classified service and establishing rules or policies for employer-paid costs of training or educational courses, including tuition and fees, shall submit the rules and policies to the office of management and budget for review and comment, and after addressing any comments of the office of management and budget, shall submit the rules and policies to the legislative council's administrative rules committee for approval. Within sixty days after the close of each biennial period, each state agency, department, or institution providing employer-paid costs of training or educational courses, including tuition and fees, under rules approved by the administrative rules committee, shall file with the office of management and budget a report indicating the individuals receiving employer-paid costs of training or educational courses, including tuition and fees; the amount paid; and a statement of the public purpose or benefit of the expenditure. Within ninety days after the close of each biennial period, the office of management and budget shall submit to the legislative council a report summarizing this information. An employee who receives employer-paid tuition reported under this section who leaves employment with that employer within two years of receiving the tuition must repay tuition received under this section on a prorated basis. An expenditure for employer-paid training or educational courses, including tuition and fees, under this section is deemed to be made for a public purpose and may not be construed as a gift for purposes of section 18 of article X of the Constitution of North Dakota.

**SECTION 3.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Employer-paid professional organization membership and service club dues.** Each state agency, department, or institution may pay employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. Within sixty days after the close of each biennial period, each executive branch state agency, department, or institution, except an institution of higher education, providing employer-paid professional organization membership and service club dues shall file with the office of management and budget a report indicating the individuals receiving employer-paid professional organization membership and service club dues, the amount paid, and a statement of the public purpose or benefit of the expenditure. Within ninety days after the close of each biennial period, the office of management and budget shall submit to the legislative council a report summarizing this information. An expenditure made under this section is deemed to be made for a public purpose and may not be construed as a gift for purposes of section 18 of article X of the Constitution of North Dakota.

**SECTION 4.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Expenditure made pursuant to rule or policy.** An expenditure made pursuant to a rule or policy adopted pursuant to sections 1 through 3 of this Act is not a criminal offense.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 461****HOUSE BILL NO. 1463**  
(Representatives Wolf, Clark, Myxter)  
(Senators Flakoll, Robinson, Seymour)

AN ACT to create and enact four new sections to chapter 54-07 of the North Dakota Century Code, relating to the creation of a state youth council; to provide for a report to the legislative council; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

**North Dakota youth council - Creation.**

1. The North Dakota youth council consists of:
  - a. Sixteen individuals appointed by the governor;
  - b. One member of the legislative assembly appointed by the majority leader of the house of representatives;
  - c. One member of the legislative assembly appointed by the minority leader of the house of representatives;
  - d. One member of the legislative assembly appointed by the majority leader of the senate;
  - e. One member of the legislative assembly appointed by the minority leader of the senate; and
  - f. The lieutenant governor, who shall serve as the chairman.
2. At the time of appointment, the individuals appointed by the governor must:
  - a. Be at least seventeen years of age but may not have reached the age of twenty-five;
  - b. Be residents of this state; and
  - c. Include representation from:
    - (1) Diverse social, economic, and ethnic groups;
    - (2) Rural and urban areas; and
    - (3) Each of the areas designated by the governor's executive order 1978-12, dated October 5, 1978.

**SECTION 2.** A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

**Youth council chairman - Meetings.** The North Dakota youth council shall meet twice each year, at the call of the chairman. The meetings may be conducted using audioconferencing or videoconferencing facilities available in state agencies, institutions of higher education, school districts, or other political subdivisions.

**SECTION 3.** A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

**Youth council powers.** The North Dakota youth council may accept gifts, grants, and donations of money, property, and services to carry out this Act. The council may form subcommittees to explore its various issues and concerns and complete its duties as set forth in section 4 of this Act. The subcommittees may hold regional meetings in any of the areas designated by the governor's executive order 1978-12 dated October 5, 1978.

**SECTION 4.** A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

**Youth council duties.** The North Dakota youth council shall develop a list of issues and concerns pertinent to residents of this state who have not yet reached the age of twenty-five. The list may include education, health care, employment opportunities, and quality of life issues such as recreation and entertainment. The council, on its own and in conjunction with any guests it elects to invite, shall explore its issues and concerns, review current situations, and develop recommendations for consideration by local, regional, and state-level policymakers. The council shall provide a report and any recommendations to the legislative council before September 1, 2010.

**SECTION 5. EXPIRATION DATE.** This Act is effective through June 30, 2011, and after that date is ineffective.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 462****SENATE BILL NO. 2392**  
(Senators Miller, Krebsbach)

AN ACT to amend and reenact section 41-09-96, subsection 1 of section 43-07-10, subdivision e of subsection 1 of section 54-05.1-03, and sections 54-09-04 and 54-09-08 of the North Dakota Century Code, relating to secured transaction filing fees, contractor license renewals, lobbyist registration fees, and fees collected by the secretary of state.

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

**SECTION 1. AMENDMENT.** Section 41-09-96 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-96. (9-525) Fees.**

1. The fee for filing and indexing an original statement under this title, fifteen dollars plus one dollar per additional page. When a nonstandard statement is presented for filing, an additional fee of five dollars must be paid. An additional fee may not be charged for the same statement to gain protection under the central notice system.
2. The fee for filing and indexing an amendment, including continuations, assignments, releases, or correction statements under this title, ten dollars plus one dollar per additional page. An additional fee may not be charged for the same document to gain protection under the central notice system.
3. A fee may not be charged for responding to a request for information from the filing office communicating whether there is on file any financing statement or verified statement naming a particular debtor.
4. The fee for a filing office providing information on specific filings on a particular debtor is seven dollars per debtor for the first five entries, plus two dollars for each additional five entries or fraction thereafter.
5. The fee for a filing office providing copies of each filing for a particular debtor is seven dollars per debtor plus two dollars per page for each page over three pages.
6. The fee for a filing office providing certified copies of filings on a particular debtor is ~~seven~~ ten dollars plus ~~one dollar~~ two dollars per page for attachments.
7. ~~For furnishing copies only of a filed instrument, one dollar per printed page.~~
8. Any fees collected by the secretary of state pursuant to this chapter must be deposited in the general fund in the state treasury, except the fees collected under subsection 6 of section 41-09-94, must be deposited in the secretary of state's general services operating fund.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, ~~which that~~ includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars; and the nature of the work of each project, contract, or subcontract; ~~and, if a performance bond was required, the name and address of the person who issued the bond.~~ The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.

**SECTION 3. AMENDMENT.** Subdivision e of subsection 1 of section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- e. The secretary of state shall charge a fee of twenty-five dollars for registering each lobbyist and the first person represented by the lobbyist and an additional fee of ~~five~~ fifteen dollars for each subsequent person represented by the lobbyist.

**SECTION 4. AMENDMENT.** Section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-04. Fees.** The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, ~~one dollar for every four pages or fraction thereof~~ fifty cents per page.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
  - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
  - b. A search of any record for which written verification of the facts of the search is required; and
  - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

5. For filing any paper not otherwise provided for, ten dollars.
6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
7. ~~For sending a copy of a document by electronic transmission, one dollar for each page-~~
8. For filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
- 9- 8. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

An individual required to file an oath of office with the secretary of state may not be charged for filing the oath of office, nor may a state or county officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars.

If, upon due presentment, any check, draft, money order, or other form of lawful payment provisionally accepted in payment of any filing fee authorized to be charged and collected by the secretary of state, is not honored or paid, or if no lawful form of payment accompanies the filing, any record of credit or payment must be canceled or reversed as though no credit had been given or payment attempted and the filing or action is void. The secretary of state may return to the last-known address of the filer any record or document that was attempted to be filed or may retain as unfiled the record or document for a reasonable time to permit proper payment and filing.

This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

**SECTION 5. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-08. Secretary of state's general services operating fund.** The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection ~~9~~ 8 of section 54-09-04, and sections 10-35-33, 54-09-10, and 54-09-11. At the close of each biennium, the secretary of state shall transfer any unobligated

balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 463****HOUSE BILL NO. 1129**

(Political Subdivisions Committee)  
(At the request of the State Auditor)

AN ACT to amend and reenact sections 54-10-14 and 54-10-19 of the North Dakota Century Code, relating to audits of political subdivisions; to repeal section 54-10-18 of the North Dakota Century Code, relating to records and fiscal affairs of counties; to provide for a legislative council study; and to declare an emergency.

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

<sup>177</sup> **SECTION 1. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.** The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area career and technology centers.
13. Correction centers.
14. Recreation service districts.

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<sup>177</sup> Section 54-10-14 was also amended by section 1 of Senate Bill No. 2295, chapter 464.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The fees must be deposited in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students; cities with less than ~~three~~ five hundred population; park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts; and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed ~~forty~~ eighty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to ~~forty~~ eighty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections ~~shall~~ must result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

**SECTION 2. AMENDMENT.** Section 54-10-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-19. Supervision of books and accounts of public institutions and private institutions with which state has dealings.** ~~The state auditor shall assume and exercise supervision over the books and financial accounts of the several public offices and institutions which the state auditor is authorized to examine.~~ The state auditor may examine the books and accounts of all private institutions with which the state has any dealings so far only as the same relate to such dealings. If any public officer having control of any such office or institutions fails or refuses to comply with the directions of the state auditor, the auditor shall report the facts to the governor and to the manager of the state bonding fund, and such refusal constitutes grounds for removal from office and cancellation of the bond of such officer.

**SECTION 3. REPEAL.** Section 54-10-18 of the North Dakota Century Code is repealed.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - AUDITS OF POLITICAL SUBDIVISIONS.** During the 2009-10 interim, the legislative council shall study the structure and requirements of the state auditor's office necessary to carry out its auditing of political subdivisions, as required by law, including how such audits should be adequately self-funded. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

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

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 464****SENATE BILL NO. 2295**

(Senators Anderson, Lindaas, Olafson)  
(Representatives Frantsvog, Holman, S. Meyer)

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to exceptions for small cities from political subdivision audit requirements.

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

<sup>178</sup> **SECTION 1. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.** The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area career and technology centers.
13. Correction centers.
14. Recreation service districts.

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<sup>178</sup> Section 54-10-14 was also amended by section 1 of House Bill No. 1129, chapter 463.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The fees must be deposited in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students; cities with less than ~~three~~ five hundred population; park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts; and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 465****HOUSE BILL NO. 1148**

(Government and Veterans Affairs Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 54-10-15 of the North Dakota Century Code, relating to audits conducted by the state auditor at the request of the state court administrator.

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

**SECTION 1. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, ~~or upon petition, or upon request of the state court administrator.~~** The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.

Approved April 16, 2009

Filed April 17, 2009

**CHAPTER 466****SENATE BILL NO. 2135**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 54-11-01 of the North Dakota Century Code, relating to the duties and powers of the state treasurer.

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

**SECTION 1. AMENDMENT.** Section 54-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-11-01. Duties and powers of state treasurer.** The state treasurer shall:

1. ~~Receive~~ Shall receive and safely keep all ~~the public moneys belonging to the state not required to be received and kept by some other person which must be deposited into the state treasury and pay out the same as directed by law.~~
2. ~~Register the orders or certificates of the office of management and budget delivered to the state treasurer when moneys are paid or to be paid into the treasury.~~
3. ~~2.~~ Prepare a receipt ~~Shall collect a record~~ for each deposit of money into the treasury. ~~The receipt record~~ must show the amount, the source from which the money accrued, and the funds into which it is paid. ~~The receipts records~~ must be numbered in order. ~~Duplicates, if requested, must be delivered to the office of management and budget and the person paying money into the treasury.~~
4. ~~3.~~ Pay ~~Shall pay~~ warrants drawn by the office of management and budget and signed by the state auditor and state treasurer out of the funds upon which they are drawn and in the order in which they are presented.
5. ~~4.~~ Keep ~~Shall keep~~ an account of all moneys received and disbursed.
6. ~~5.~~ Keep ~~Shall keep~~ separate accounts of the different funds.
7. ~~6.~~ Keep ~~Shall keep~~ a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
8. ~~7.~~ Receive ~~Shall receive~~ in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor and state treasurer in conformity with law.
9. ~~8.~~ Redeem ~~Shall redeem~~ warrants drawn by the office of management and budget and signed by the state auditor and state treasurer in conformity with law, if there is money in the treasury appropriated for that purpose.

- 10- 9. ~~Report to the office of management and budget on the last day of each month the amount disbursed for the redemption of bonds and~~ Shall maintain a report of the payment of warrants during the month. The report must show:
- a. The date and number of each ~~bond and~~ warrant;
  - b. The fund out of which each was paid; and
  - c. The balance in cash on hand in the treasury to the credit of each fund.
- 44- 10. At the request of either house of the legislative assembly, or of any committee thereof, shall give information in writing as to the condition of the treasury, or upon any subject relating to the duties of office.
- 42- 11. ~~Submit~~ Shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the state are deposited. It must be certified by the state treasurer and approved by the governor.
- 43- 12. ~~Authenticate~~ Shall authenticate with the official state seal all writings and papers issued from the treasurer's office.
- 44- 13. ~~Keep~~ Shall keep and disburse all moneys belonging to the state in the manner provided by law.
- 45- 14. ~~Keep~~ Shall keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
- 46- 15. Unless otherwise specified by law, shall credit all income earned on the deposit or investment of all state moneys to the state's general fund. This subsection does not apply to:
- a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
  - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
  - c. Income earned on college and university funds not deposited in the state treasury.
- 47- 16. ~~Perform~~ Shall perform all other duties as are prescribed by law.

- ~~48.~~ 17. ~~Correct~~ Shall correct any underpayment, overpayment, or erroneous payment of tax distribution funds made by the state treasurer in a timely manner. An adjustment of an insignificant amount need not be made at the discretion of the state treasurer. The state treasurer shall adopt a written policy identifying what is considered insignificant.
18. May work to promote access to financial education tools that can help all North Dakotans make wiser choices in all areas of personal financial management.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 467****SENATE BILL NO. 2145**  
(Political Subdivisions Committee)  
(At the request of the State Treasurer)

AN ACT to repeal section 54-11-08 of the North Dakota Century Code, relating to registration of state bonds.

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

**SECTION 1. REPEAL.** Section 54-11-08 of the North Dakota Century Code is repealed.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 468**

**HOUSE BILL NO. 1168**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to repeal section 54-11-09 of the North Dakota Century Code, relating to registration of bonds by the state treasurer.

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

**SECTION 1. REPEAL.** Section 54-11-09 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 469****HOUSE BILL NO. 1306**

(Representatives Skarphol, Delmore, Thoreson)  
(Senators Lyson, Nething, Robinson)

AN ACT to create and enact a new section to chapter 12-59, a new subdivision to subsection 2 of section 28-32-01, a new subsection to section 39-06.1-11, and five new sections to chapter 54-12 of the North Dakota Century Code, relating to the authority of the parole board to use the twenty-four seven sobriety program as an intermediate sanction or condition of parole, temporary restricted driver's permits, and establishment of a statewide twenty-four seven sobriety program by the attorney general; to amend and reenact subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to supervision of probationers; to provide an appropriation; and to provide a continuing appropriation.

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

**SECTION 1.** A new section to chapter 12-59 of the North Dakota Century Code is created and enacted as follows:

**Twenty-four seven sobriety program.** The parole board may authorize participation in the twenty-four seven sobriety program as an intermediate sanction or condition of parole.

**SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;

- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house; or
- h. Intensive supervision program; or
- i. Participation in the twenty-four seven sobriety program.

**SECTION 3.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

**SECTION 4.** A new subsection to section 39-06.1-11 of the North Dakota Century Code is created and enacted as follows:

If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance and the offender's driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit to the offender only for the purpose of participation in the twenty-four seven sobriety program upon submission of proof of financial responsibility and proof of participation in the program by the offender. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.

**SECTION 5.** Five new sections to chapter 54-12 of the North Dakota Century Code are created and enacted as follows:

**Twenty-four seven sobriety program.** The attorney general may establish a statewide twenty-four seven sobriety program. The sobriety program involves coordination among state, county, and municipal agencies to implement procedures as alternatives to incarceration for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or for other offenses in which alcohol or controlled substances are involved.

**Twenty-four seven sobriety program guidelines and program fees.** The attorney general, in cooperation with law enforcement, the judiciary, the department of corrections and rehabilitation, and the traffic safety division of the department of transportation, may develop guidelines, policies, and procedures to administer the

twenty-four seven sobriety program and to test offenders to enforce compliance with the sobriety program, including sobriety testing twice per day seven days per week, electronic monitoring, including home surveillance and remote electronic alcohol monitoring, urine testing and drug patch testing, and to establish program fees, all of which are not subject to chapter 28-32.

**Twenty-four seven sobriety program fund - Continuing appropriation.**

There is created the twenty-four seven sobriety program fund to be administered by the attorney general. The fund includes appropriated funds; moneys received from grants from the United States; agencies of this state; private grants, gifts, or donations; and program fees. The funds are appropriated as a continuing appropriation to the attorney general for expenses necessary for the administration and operation of the sobriety program, including staff support, training and travel costs, computer software and hardware, testing equipment, and supplies.

**Twenty-four seven sobriety program fees.** A criminal justice agency may collect program fees from offenders participating in the twenty-four seven sobriety program, including fees for twice per day breath alcohol testing, urine testing, drug patch testing, installation and deactivation fees for remote electronic alcohol monitoring devices, and remote electronic alcohol monitoring daily fees. The criminal justice agency shall pay all program fees into the general fund of the governing body. The fees may only be applied to twenty-four seven sobriety program support services, equipment maintenance and replacement, and compliance with the program. The governing body shall pay any daily fees collected for remote electronic alcohol monitoring to the twenty-four seven sobriety program fund.

**Bond conditions.** A district or municipal court of this state may order an offender charged with a violation of section 39-08-01 or equivalent ordinance, domestic violence, abuse or neglect of a child, or other offense in which alcohol or controlled substances are involved to participate in the twenty-four seven sobriety program as a condition of bond.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the attorney general for the purpose of the twenty-four seven sobriety program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 470****HOUSE BILL NO. 1027**

(Legislative Council)  
(Budget and Finance Committee)

AN ACT to create and enact section 54-16-04.3 of the North Dakota Century Code, relating to powers and duties of the emergency commission and budget section; to amend and reenact section 54-16-03.1 of the North Dakota Century Code, relating to emergency commission requests; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-03.1. Submission of petition to emergency commission.** When an emergency exists, a state officer may present to the emergency commission an itemized petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; ~~or~~ accept and expend other funds pursuant to section 54-16-04.2; or recommend full-time equivalent positions pursuant to section 54-16-04.3.

**SECTION 2.** Section 54-16-04.3 of the North Dakota Century Code is created and enacted as follows:

**Commission may recommend full-time equivalent positions - Budget section approval.** On the advice of the office of management and budget and upon the recommendation of the emergency commission, the budget section of the legislative council may authorize a state officer to employ full-time equivalent positions in addition to those authorized by the legislative assembly. The authority to employ a full-time equivalent position under this section is effective only for the remainder of the biennium during which the authority is granted by the budget section.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2009.

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

Approved April 10, 2009  
Filed April 13, 2009

**CHAPTER 471****HOUSE BILL NO. 1165**

(Political Subdivisions Committee)

(At the request of the Housing Finance Agency)

AN ACT to amend and reenact subsection 2 of section 54-17-07.3 of the North Dakota Century Code, relating to the mobile home and manufactured housing finance program.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 54-17-07.3 of the North Dakota Century Code is amended and reenacted as follows:

2. Mobile home and manufactured housing finance program. A program or programs to provide financing for the purchase or guaranty of loans a loan made by lenders to persons or families of low and moderate income a lender to finance the purchase of a mobile homes and home or a manufactured housing unit other than on a real property mortgage basis. A program authorized under this subsection may provide assistance in the development of low-income to moderate-income housing or to otherwise assist a developing community in the state address an unmet housing need or alleviate a housing shortage.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 472****SENATE BILL NO. 2127**

(Agriculture Committee)

(At the request of the Bank of North Dakota)

AN ACT to amend and reenact subsection 2 of section 54-17-34 and section 54-17-34.2 of the North Dakota Century Code, relating to definitions and financing under the first-time farmer finance program.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 54-17-34 of the North Dakota Century Code is amended and reenacted as follows:

2. "Substantial farmland" means any parcel of land unless the parcel is smaller than thirty percent of the median size of a farm in the county in which the parcel is located ~~and does not at any time while held by the individual have a fair market value in excess of one hundred twenty-five thousand dollars.~~

**SECTION 2. AMENDMENT.** Section 54-17-34.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-34.2. First-time farmer participation.** The first-time farmer finance program is limited as required by applicable provisions of the Internal Revenue Code of 1986 and any regulations adopted thereunder, as amended, and under the first-time farmer finance program:

1. Financing may not be made to individuals with a net worth ~~of more than two hundred thousand dollars; that exceeds the net worth requirement of the beginning farmer revolving loan program administered by the Bank of North Dakota and established by loan policy; and~~
2. ~~Financing may not be made to an individual in an aggregate amount in excess of two hundred fifty thousand dollars; and~~
3. Financing may only be made to first-time farmers for the acquisition of land in the state of North Dakota, livestock, farm improvements, and equipment to be used for farming purposes and may not exceed an amount established under the Internal Revenue Code of 1986, as amended.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 473****HOUSE BILL NO. 1383**  
(Representatives Onstad, S. Meyer)

AN ACT to amend and reenact subsection 6 of section 54-17.7-02 and subsection 3 of section 54-17.7-04 of the North Dakota Century Code, relating to authorization for the North Dakota pipeline authority to participate in and provide for funding of pipeline interconnection facilities.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 54-17.7-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures, and properties incidental and necessary or useful in the interconnection of pipelines or the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.

**SECTION 2. AMENDMENT.** Subsection 3 of section 54-17.7-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems, including interconnection of pipeline systems, within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota as a purchaser of last resort. The obligation of the state may not exceed ten percent of the pipeline authority's acquisition or purchase of a right to capacity in any pipeline system or systems, or interconnection of pipeline systems, and the state's obligation is limited to the funding available from the oil and gas research fund.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 474****SENATE BILL NO. 2352**

(Senators Wardner, Holmberg, Horne)  
(Representatives Carlson, Klein, S. Meyer)

AN ACT to amend and reenact section 54-21.2-03 of the North Dakota Century Code, relating to energy conservation standards for new buildings.

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

**SECTION 1. AMENDMENT.** Section 54-21.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-21.2-03. Energy conservation standards.** ~~The standards~~ Standards for energy conservation in new building construction, for thermal design conditions and criteria for buildings, and for adequate thermal resistance in regard to the design and selection of mechanical, electrical service, and illumination systems and equipment which will enable the effective use of energy in new buildings, must ~~at least equal the Energy Conservation Code based on the Council of American Building Officials Model Energy Code, 1989 Edition.~~ be included in the state building code. ~~The department of commerce shall adopt rules to implement, update, and amend the Model Energy Code~~

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 475****SENATE BILL NO. 2354**

(Senators Krebsbach, Bakke, Fischer)  
(Representatives Conrad, Hawken, Martinson)

AN ACT to amend and reenact section 54-21.3-03 of the North Dakota Century Code, relating to the state and local building codes.

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

**SECTION 1. AMENDMENT.** Section 54-21.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-21.3-03. State building code.**

1. The department of commerce, in cooperation with the state building code advisory committee, shall adopt rules to implement, amend, and periodically update the state building code, which must consist of the international building, residential, mechanical, and fuel gas codes.
2. The state building code advisory committee consists of:
  - a. Two representatives appointed by the North Dakota building officials association, one of whom must be from a jurisdiction of fewer than ten thousand people.
  - b. One representative appointed by the North Dakota chapter of the American institute of architects.
  - c. One representative appointed by the North Dakota society of professional engineers.
  - d. One representative appointed by the North Dakota association of builders.
  - e. One representative appointed by the North Dakota association of mechanical contractors.
  - f. One representative appointed by the associated general contractors.
  - g. A fire marshal appointed by the state fire marshal.
  - h. One individual appointed by the state electrical board.
3. The state building code advisory committee shall meet with the department of commerce or a designee of the commissioner of commerce at least once each calendar year to address proposed amendments to the state building code. The department of commerce may not adopt an amendment to the state building code unless the amendment is approved by a majority vote of:

- a. One representative appointed by the North Dakota chapter of the American institute of architects;
  - b. One representative appointed by the North Dakota society of professional engineers;
  - c. One representative appointed by the North Dakota association of builders;
  - d. One representative appointed by the North Dakota association of mechanical contractors;
  - e. One representative appointed by the associated general contractors; and
  - f. Representatives of eligible jurisdictions as established by administrative rule.
4. Neither the state building code nor a building code adopted by a city, township, or county may include a requirement that fire sprinklers be installed in a single family dwelling or a residential building that contains no more than two dwelling units.
5. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
- ~~5-~~ 6. The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.
- ~~6-~~ 7. A modular residential structure or a prebuilt home placed in the state must be constructed in compliance with the state building code. A modular residential structure or a prebuilt home placed in a jurisdiction that has amended the state building code must be constructed in compliance with the state building code and the amendments adopted by that jurisdiction.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 476****SENATE BILL NO. 2355**

(Senators Dever, Heckaman)

(Representative L. Meier)

AN ACT to provide a short-term shelter and assessment pilot program for at-risk youth; to provide a report to the legislative council; to provide for a legislative council study; and to provide an appropriation.

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

**SECTION 1. SHORT-TERM SHELTER AND ASSESSMENT PILOT PROGRAM.** The department of corrections and rehabilitation shall establish a pilot program in the south central judicial district for the purpose of providing short-term shelter, assessment, and intervention services for at-risk children and youth, for the biennium beginning July 1, 2009, and ending June 30, 2011. The program must allow for the placement of at-risk children and youth in a short-term shelter program and provide professional assessment and family reunification services as an alternative to placement in foster care or group care. The shelter facility must be nonsecure and approved by the juvenile court. The department shall contract with a private nonprofit organization to provide the pilot program services.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of contracting with a private nonprofit organization to conduct the pilot program established in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. REPORT TO LEGISLATIVE COUNCIL.** The department of corrections and rehabilitation shall provide a report to the legislative council regarding the short-term shelter and assessment pilot program authorized by section 1 of this Act.

**SECTION 4. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the statewide need for short-term shelter, assessment, and intervention services for at-risk children and youth across the state and the feasibility and desirability of using such services instead of foster or group care for short-term placements. The study also must include recommendations regarding sources of reliable funding, the appropriate state administrative agency, and a delivery system that reflects local resources and preferences and evidence-based methods for involving parents in follow-up services. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 477****SENATE BILL NO. 2111**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact subsection 7 of section 54-23.4-01 of the North Dakota Century Code, relating to crime victims compensation.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 54-23.4-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.
  - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of ~~three~~ five thousand dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.
  - b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.
  - c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.
  - d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.

- e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.
- f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 478****HOUSE BILL NO. 1115**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 54-27-11 of the North Dakota Century Code, relating to fiscal administration.

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

**SECTION 1. AMENDMENT.** Section 54-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-11. Appropriation - Record kept by office of management and budget and treasurer - Duties and limitations.** The office of management and budget ~~and state treasurer each~~ shall keep a record ~~in their offices~~ showing:

1. The total amount appropriated for maintenance for each state officer or agency, and of each separate item thereof.
2. The amount equal to seventy-five and twenty-five percent of the total appropriated and each separate item thereof.
3. The amount expended and the balance on hand. The term expended includes amounts which are payable for which funds have not yet been disbursed.

The office of management and budget may not allow any expenditure or issue any warrant during the first eighteen months of each biennium in excess of seventy-five percent of any item appropriated for salaries and wages and operating expenses for any state official or state agency in the executive branch of government ~~nor may the state treasurer pay such warrant~~. The duties and limitations imposed upon the office of management and budget ~~and state treasurer~~ apply only to the total amount appropriated for salaries and wages and operating expenses for the biennium but not to separate amounts appropriated for those line items, for all penal and charitable institutions of this state and all institutions under the jurisdiction and supervision of the state board of higher education. The administrative department, office, or board shall keep a record showing the amount, equal to seventy-five and twenty-five percent, respectively, of the total amount and of each separate item appropriated for salaries and wages and operating expenses for all such institutions under its control and is responsible for the enforcement of the restrictions upon the expenditure of all moneys appropriated to such institutions for such purposes.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 479****HOUSE BILL NO. 1130**  
(Transportation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact subsection 2 of section 54-27-19 of the North Dakota Century Code, relating to vehicle registrations for purposes of highway tax distribution fund allocations.

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

<sup>179</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

2. Thirty-seven percent of such moneys must be allocated to the counties of this state in proportion to the number of ~~motor~~ vehicle registrations credited to each county. Each county must be credited with the certificates of title of ~~all motor~~ vehicles registered by residents of such county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census. Provided, however, that in each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
  - a. A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
  - b. The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under subdivision a.

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<sup>179</sup> Section 54-27-19 was also amended by section 18 of Senate Bill No. 2012, chapter 40.

- c. The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under subdivision a.
- d. The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under subdivisions b and c for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 480****SENATE BILL NO. 2110**

(Industry, Business and Labor Committee)  
(At the request of the Department of Commerce)

AN ACT to create and enact two new sections to chapter 54-60 of the North Dakota Century Code, relating to the rural development office and the North Dakota rural development council; to amend and reenact sections 10-30.5-04, 54-34.3-01, 54-34.3-03, and 54-34.3-04, subsection 2 of section 54-34.3-13, sections 54-34.3-15, 54-34.4-01, and 54-34.4-02, subsection 1 of section 54-34.4-03, section 54-60-03, subsection 3 of section 54-60-04, and sections 54-60-06 and 54-60-17 of the North Dakota Century Code, relating to the powers of the North Dakota Development Fund, Incorporated, the department of commerce division of economic development and finance, the department of commerce division of tourism, the state tourism policy, the commissioner of commerce, the North Dakota economic development foundation, the North Dakota commerce cabinet, and the department of commerce division of workforce development; and to repeal sections 54-34.3-05, 54-34.4-04, and 54-60-11 of the North Dakota Century Code, relating to the finance office, the motion picture development office, and target industries.

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

<sup>180</sup> **SECTION 1. AMENDMENT.** Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-04. (~~Effective through July 31, 2009~~) Powers.** The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.
3. ~~Borrow funds not to exceed ten million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds. The corporation may provide~~ Provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

~~(Effective after July 31, 2009) Powers.~~ The corporation must be organized as a nonprofit corporation. In addition to the powers in chapter 10-33, the corporation may:

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<sup>180</sup> Section 10-30.5-04 was also amended by section 2 of House Bill No. 1202, chapter 109.

1. ~~Cooperate and contract with any private or public entity.~~
2. ~~Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.~~

**SECTION 2. AMENDMENT.** Section 54-34.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-01. Department of commerce division of economic development and finance established - Mission.** The department of commerce division of economic development and finance is established to assume the functions, powers, and duties of the department of economic development and finance with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on ~~advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing~~ identified target industries;
3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the ~~Myron G. Nelson Fund, Incorporated,~~ the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

**SECTION 3. AMENDMENT.** Section 54-34.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-03. Division structure.** The division consists of:

1. ~~A finance office;~~

2. ~~An international business and trade office;~~
3. Offices established by statute; and
4. 2. Offices the director organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the division.

**SECTION 4. AMENDMENT.** Section 54-34.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-04. Director - Compensation - Duties.** A director shall supervise and control the division. The director shall:

1. Manage the internal operations of the division and establish policies that promote the orderly and efficient administration of the division;
2. Appoint personnel as may be determined necessary to carry out this chapter and fix their compensation within the limits of legislative appropriations;
3. Assume central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the division;
4. Coordinate that program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development, and those government entities shall advise, cooperate, and provide reasonable assistance to the director in carrying out this chapter;
5. Advise, and cooperate with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any individual or other private or public entity, and call upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the division and the state may benefit from up-to-date technical advice, information, and assistance;
6. Cooperate with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding and to receive those funds to be expended for purposes consistent with this chapter;
7. Have authority to enter into contracts upon terms and conditions as determined by the director to be reasonable and to effectuate the purposes of this chapter; ~~and~~
8. Identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the division, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the division; and

9. Have authority to do any and all other things necessary and proper to carry out this chapter.

**SECTION 5. AMENDMENT.** Subsection 2 of section 54-34.3-13 of the North Dakota Century Code is amended and reenacted as follows:

2. The department shall designate an applicant city as a rural growth incentive city eligible for a loan if the city raises funds in the amount of a dollar-for-dollar match for the amount requested in the loan; ~~prepares an economic development strategic plan,~~ and meets any additional program requirements provided by rule. The source of city funds used for loan matching funds may be any combination of public and private funds. If the department designates a city as a rural growth incentive city eligible for a loan under this section, subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this subsection. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this subsection, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding.

**SECTION 6. AMENDMENT.** Section 54-34.3-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-15. Local economic developer certification program and education programs.** The director ~~shall may~~ implement a certification ~~program and education programs~~ through which the division provides training to assist local economic developers and community leaders in meeting the needs of businesses. The director may contract with a third-party service provider to assist in implementing the program. The director may set and charge a fee for the receipt of services under this program.

**SECTION 7. AMENDMENT.** Section 54-34.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.4-01. Division of tourism - Director.** The division of tourism is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's ~~political subdivisions~~ tourism partners. The director shall supervise and control the division of tourism.

**SECTION 8. AMENDMENT.** Section 54-34.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.4-02. Duties of director.** The director of the department of commerce division of tourism, within the limits of legislative appropriations, shall:

1. Implement the state's tourism policy;
2. Prepare and update annually a tourism ~~master~~ marketing plan for the ~~development~~ promotion and expansion of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a ~~five-year plan~~ marketing strategy for activities of the division;
3. Work with industry groups to prepare a long-term strategic plan each biennium;
4. Measure and forecast visitor volume, receipts, and related social and economic impacts;
- 4- ~~5.~~ Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways ~~and~~, parks, ~~and~~ historic sites;
- 5- ~~6.~~ Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:
  - a. Display ~~Print~~ advertising in magazines ~~and~~, newspapers, ~~and~~ direct mail;
  - b. Advertising on radio ~~and~~, on television, online, in displays, or using other advertising media;
  - c. Publishing pamphlets, brochures, and other graphic and pictorial materials; ~~and~~
  - d. Designing the tourism side of the state highway map;
  - e. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions, events, and recreational opportunities; ~~and~~
  - f. Other marketing activities and events aimed at increasing visitor volume;
- 6- Participate in travel shows;
7. Supervise ~~and administer~~ visitor information centers that receive funding from the state Work with the department of transportation to improve visitor services along highways in the state and in state rest areas;
8. Develop opportunities for professional and technical education and training in the visitor industry;
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;

10. ~~Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;~~
44. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and
- ~~42.~~ 11. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

**SECTION 9. AMENDMENT.** Subsection 1 of section 54-34.4-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The legislative assembly declares that:
  - a. This state is endowed with scenic beauty, historical sites, cultural resources, local festivals, attractions, recreational facilities, and a population whose ethnic diversity and traditions are attractive to visitors;
  - b. These human and physical resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the state's residents;
  - c. Tourism contributes to economic well-being by creating job opportunities, generating revenues for local businesses, and creating new wealth in the economy;
  - d. Tourism is an educational and informational medium for personal growth which informs residents about their state's geography and history, their political institutions, their cultural resources, their environment, and about each other;
  - e. Tourism instills state pride and a sense of common interest among the state's residents;
  - f. Tourism enhances the quality of life and well-being of the state's residents by affording opportunities for recreation, new experiences, and relief from job stress;
  - g. Tourism advertising and marketing improves the image of North Dakota;
  - h. Tourism promotes international understanding and good will, and contributes to intercultural appreciation;
  - ~~h.~~ i. Tourism engenders appreciation of the state's cultural, architectural, technological, agricultural, and industrial achievements and is helpful in attracting new residents;
  - ~~i.~~ j. The development and promotion of tourism to and within the state is in the interest of the people of this state;

- ~~j~~ k. Tourism should develop in an orderly manner in order to provide the maximum benefit to the state and its residents;
- ~~k~~ l. The development of a strong and competitive state visitor industry depends upon the availability of trained personnel, necessary infrastructure, and a receptive climate for tourism investment; and
- ~~l~~ m. A comprehensive tourism policy is essential if tourism in the state is to grow in an orderly manner.

<sup>181</sup> **SECTION 10. AMENDMENT.** Section 54-60-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-03. Commissioner of commerce - Duties.** With the advice and counsel of the North Dakota development foundation, the governor shall appoint a commissioner to supervise, control, and administer the department. The commissioner serves at the pleasure of the governor and receives a salary set by the governor within the limits of legislative appropriations. The commissioner:

1. Shall file an oath of office in the usual form before commencing to perform the duties of the commissioner;
2. Shall serve as chairman of the cabinet;
3. ~~Shall prepare the cabinet's list identifying economic development moneys included in budget requests of cabinet agencies;~~
4. Shall appoint personnel as may be determined necessary to carry out the duties of the department;
- ~~5~~ 4. Shall manage the operations of the department and oversee each of the divisions;
- ~~6~~ 5. Shall assume central responsibilities to develop, implement, and coordinate a working network of commerce service providers;
- ~~7~~ 6. Shall coordinate the department's services with commerce-related services of other state agencies;
- ~~8~~ 7. Shall advise and cooperate with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; research institutions; and with any individual or other private or public entity;
- ~~9~~ 8. May enter contracts upon terms and conditions as determined by the commissioner to be reasonable and to effectuate the purposes of this chapter;
- ~~10~~ 9. Shall report between the first and tenth legislative days of each regular legislative session to a standing committee of each house of the

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<sup>181</sup> Section 54-60-03 was also amended by section 89 of House Bill No. 1436, chapter 482.

legislative assembly as determined by the legislative council and shall report annually to the foundation:

- a. On the department's goals and objectives since the last report;
  - b. On the department's goals and objectives for the period until the next report;
  - c. On the department's long-term goals and objectives;
  - d. On the department's activities and measurable results occurring since the last report; and
  - e. On commerce benchmarks, including the average annual wage in the state, the gross state product exclusive of agriculture, and the number of primary sector jobs in the state;
44. 10. Shall adopt rules necessary to implement this chapter; and
42. 11. May take any actions necessary and proper to implement this chapter.

**SECTION 11. AMENDMENT.** Subsection 3 of section 54-60-04 of the North Dakota Century Code is amended and reenacted as follows:

3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities ~~in~~ of the state.

**SECTION 12. AMENDMENT.** Section 54-60-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-06. Commerce cabinet.** The North Dakota commerce cabinet is created. The cabinet is composed of the directors of each of the department divisions and of the executive heads, or other authorized representatives, of the state board for career and technical education, the state board of higher education, the Bank of North Dakota, the department of agriculture, workforce safety and insurance, the department of transportation, job service North Dakota, the game and fish department, and of any other state agency appointed by the commissioner. The commissioner is the chairman of the cabinet and shall determine which agencies are members of the cabinet. The cabinet shall:

1. Coordinate and communicate economic development and tourism efforts of the agencies represented.
2. Meet at times determined by the commissioner.
3. ~~Develop and make available before each regular session of the legislative assembly a list that identifies economic development moneys included in budget requests of cabinet agencies.~~

<sup>182</sup> **SECTION 13. AMENDMENT.** Section 54-60-17 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-17. Division of workforce development - Higher education internships, apprenticeships, and work experience opportunities.** ~~The division of workforce development shall administer a program to increase use of higher education internships, apprenticeships, and work experience opportunities for higher education students and high school students enrolled in grade eleven or twelve. The primary focus of this program must be higher education internships in target industries. This program shall provide services to employers, communities, and business organizations to increase higher education internship, apprenticeship, and work experience opportunities.~~

**SECTION 14.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Rural development office.**

1. The commissioner shall administer the rural development office. The purpose of the office is to assist in the development of rural North Dakota communities.
2. The commissioner may contract with a third party for the provision of services for the rural development office. If the commissioner contracts with a third party under this subsection, all data and databases collected and created by the third party in performing services for the office are the property of the department and the third party.
3. The department may seek and accept any gift, grant, or donation of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the rural development office.

**SECTION 15.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**North Dakota rural development council - Composition.** The North Dakota rural development council is created.

1. The North Dakota rural development council is composed of a minimum of nine and a maximum of seventeen members. The commissioner is an ex officio voting member of the council. The governor shall appoint council members for two-year terms, except the governor shall appoint approximately one-half of the initial council members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the council members must ensure representation from eight regions designated by the commissioner. Members of the council serve at the pleasure of the governor.

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<sup>182</sup> Section 54-60-17 was also amended by section 37 of Senate Bill No. 2018, chapter 46.

2. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year.
3. The council shall have at least two meetings each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any four members. A simple majority of the council constitutes a quorum and may act upon any matter coming before the council. Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.
4. The council, in cooperation with the rural development office, shall:
  - a. Facilitate collaboration among federal, state, local, and tribal governments and the private and nonprofit sectors in the planning and implementation of programs and policies that have an impact on rural areas of the state;
  - b. Monitor, report, and comment on policies and programs that address, or fail to address, the needs of the rural areas of the state; and
  - c. Facilitate the development of strategies to reduce or eliminate conflicting or duplicative administrative or regulatory requirements of federal, state, local, and tribal governments.

<sup>183</sup> **SECTION 16. REPEAL.** Sections 54-34.3-05, 54-34.4-04, and 54-60-11 of the North Dakota Century Code are repealed.

Approved April 30, 2009  
Filed May 1, 2009

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<sup>183</sup> Section 54-60-11 was also amended by section 90 of House Bill No. 1436, chapter 482.

**CHAPTER 481****SENATE BILL NO. 2372**

(Senators Wanzek, Dotzenrod, Klein)  
(Representatives Belter, Monson, Schneider)

AN ACT to create and enact a new section to chapter 54-34.3 of the North Dakota Century Code, relating to the promotion of life science industries.

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

**SECTION 1.** A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

**Life science industries - Promotion - Exemption.** The commissioner of commerce shall promote the development of life science industries in this state. Life science industries include biotechnology, biomedical sciences, and biopharmaceuticals. If any entity owns or operates an animal or research facility, the ownership or operation does not violate the requirements of chapter 10-06.1, provided the commissioner annually certifies to the secretary of state that:

1. a. The facility is licensed or registered with the United States department of agriculture animal and plant health inspection service, as required by the Animal Welfare Act;
- b. The facility has an assurance on file with the United States public health service; or
- c. The facility is accredited by the association for assessment and accreditation of laboratory animal care; and
2. The primary purpose of the facility involves the production of products for uses other than human food consumption.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 482****HOUSE BILL NO. 1436**

(Representatives Carlson, Boucher, Monson)  
(Senators Stenehjem, O'Connell)

AN ACT to amend and reenact section 1-02-06.1, subsection 2 of section 1-02-09, sections 1-02-09.2, 4-05.1-19, 15-10-42, 15-10-43, and 15-11-39, subsection 5 of section 15-39.1-05.2, subsection 3 of section 15.1-02-13, section 15.1-02-15, subsection 3 of section 15.1-06-08, subsection 4 of section 15.1-06-08.1, sections 15.1-21-10 and 16.1-01-17, subsection 5 of section 18-11-15, section 24-02-46, subsection 3 of section 25-01.3-02, subsection 3 of section 25-02-01.1, sections 26.1-36.4-06, 28-32-03, 28-32-06, and 28-32-07, subsection 1 of section 28-32-10, sections 28-32-15, 28-32-17, 28-32-18, 28-32-19, and 28-32-20, subsection 3 of section 34-11.1-01, subsection 2 of section 40-63-03, sections 44-04-18.6, 48-08-04, and 48-10-01, subsection 4 of section 49-23-03, subsections 3 and 4 of section 50-09-29, sections 52-02-18, 54-03-02, 54-03-04, and 54-03-19.2, subsection 2 of section 54-03-20, sections 54-03-26, 54-03-27, 54-03.1-02, 54-03.2-02, and 54-05.1-02, subsections 3 and 4 of section 54-06-25, sections 54-06-31, 54-35-01, 54-35-02, 54-35-02.1, 54-35-02.2, 54-35-02.3, 54-35-02.4, 54-35-02.5, 54-35-02.6, 54-35-02.7, 54-35-02.8, 54-35-03, 54-35-04, 54-35-05, 54-35-06, 54-35-07, 54-35-08, 54-35-09, 54-35-10, 54-35-11, 54-35-12, 54-35-15, 54-35-15.1, 54-35-16, 54-35-17, 54-35-18, 54-35-22, 54-35-23, 54-35.2-01, 54-35.2-02, 54-35.2-04, and 54-35.2-05, subsection 3 of section 54-40-01, sections 54-44.1-12.1, 54-52.1-08.2, 54-55-01, 54-55-04, 54-58-03, 54-59-07, 54-59-11, 54-59-12, and 54-59-23, subsection 10 of section 54-60-03, and sections 54-60-11, 54-62-03, 57-40.6-12, 61-24-04, 61-24.5-04, 65-02-30, and 65-06.2-09 of the North Dakota Century Code, relating to differentiation between the legislative management and the legislative council as an agency of the legislative branch; to repeal section 49-21-22.2 of the North Dakota Century Code, relating to the regulatory reform review commission; and to authorize replacement of obsolete terms.

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

**SECTION 1. AMENDMENT.** Section 1-02-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**1-02-06.1. Journal entry rule - Presumption of validity of legislation.** A bill or resolution passed by the senate and the house of representatives of the legislative assembly as evidenced by the journals of the senate and house is presumed to be the bill or resolution that is signed by the presiding officers of the senate and house, presented to the governor, and filed with the secretary of state. If there is a difference between versions of a bill, the legislative council shall direct the publisher of the code to publish the law according to this section. The law as published must be presumed valid until determined otherwise by an appropriate court.

**SECTION 2. AMENDMENT.** Subsection 2 of section 1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever two or more concurrent resolutions, adopted during the same session of the legislative assembly, propose to create or amend, or amend and repeal, the same section of the Constitution of North Dakota, the secretary of state, in consultation with the attorney general, shall determine if the proposals are irreconcilable, and if they are irreconcilable, the resolution last adopted by the legislative assembly, as determined by the legislative council ~~or its designee~~, must be placed on the ballot for the appropriate election for approval or disapproval by the electorate.

**SECTION 3. AMENDMENT.** Section 1-02-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**1-02-09.2. Reconciliation of conflicting proposed amendments to the constitution.** If two or more concurrent resolutions propose to amend or create the same section of the Constitution of North Dakota, and the proposed sections are reconcilable, the legislative council, ~~or its designee~~, shall prepare a reconciled text and submit it to the secretary of state for inclusion in the appropriate ballot.

**SECTION 4. AMENDMENT.** Section 4-05.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-19. State board of agricultural research and education - Duties.** Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for budgeting and policymaking associated with the agricultural experiment station and the North Dakota state university extension service. The state board of agricultural research and education shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in this state;
3. Develop ongoing strategies for the dissemination of research information through the extension service;
4. Implement the strategies developed under subsections 2 and 3, subject to approval by the state board of higher education;
5. Develop, with the agricultural experiment station and the North Dakota state university extension service, an annual budget for the operations of these entities;
6. Develop a biennial budget request and submit that request to the president of North Dakota state university and the state board of higher education;
7. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;

8. Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative ~~council~~ management and the state board of higher education;
9. Advise the president of North Dakota state university regarding the recruitment, selection, and performance of the vice president of agricultural affairs, the extension service director, and the station director; and
10. Present a status report to the budget section of the legislative ~~council~~ management.

**SECTION 5. AMENDMENT.** Section 15-10-42 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-42. Faculty - English pronunciation - Policy - Report.** The state board of higher education shall create a policy for all institutions under its control, relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. ~~Before July 1, 2006, the state board of higher education shall report to the legislative council regarding implementation of the policy.~~

**SECTION 6. AMENDMENT.** Section 15-10-43 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-43. Veterinary medical education program - Kansas state university - Contract.**

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member from the department of veterinary and microbiological sciences at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative ~~council~~ management, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine. The legislative ~~council~~ management and the chairman of the admissions committee at the Kansas state university school of veterinary medicine may select an alternative for each of the designated positions to serve as necessary.
3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.

<sup>184</sup> **SECTION 7. AMENDMENT.** Section 15-11-39 of the North Dakota Century Code is amended and reenacted as follows:

**15-11-39. Nursing education consortium - Continuing appropriation.**

1. The university of North Dakota college of nursing shall establish and administer a nursing education consortium for the purpose of addressing common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, with a focus on the specific needs of rural communities.
2. The consortium membership must include representation of the university of North Dakota college of nursing, the university of North Dakota center for rural health, and the board of nursing. In addition, each nursing program in this state which is approved by the board of nursing and each nursing program with approval pending which is located in this state must be invited to have representation in the consortium. The consortium members may invite interested persons to join the consortium membership or to participate in consortium activities. Interested persons may include the North Dakota nurses association nursing practice council leadership team; North Dakota hospital association; workforce partners, including job service North Dakota, the department of commerce division of workforce development, rural leadership of North Dakota, and the North Dakota workforce development council; employer partners; and other interested public and private parties. The dean of the university of North Dakota college of nursing shall serve as chairman of the consortium from July 1, 2007, through December 31, 2009, during which the dean shall report to the legislative ~~council~~ management. After 2009, the chairman must be chosen by the members.
3. If the consortium secures nonstate funds to cover the capital costs of a mobile clinical nursing simulation laboratory program, the consortium may establish a mobile clinical nursing simulation laboratory program to travel the state and provide clinical education for nursing students of nursing education programs in the state and provide clinical education on current and emerging approaches to nursing excellence to medical facility staff.
4. If the consortium establishes a mobile clinical nursing simulation laboratory program, the consortium shall establish a strategic plan for the ongoing activities of the simulation laboratory program, including goals and benchmarks for the implementation of the simulation laboratory program.
5. The consortium may contract with a third party in conducting the duties of the consortium and may seek, receive, and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the consortium. Any money received by the consortium as gifts, grants, or donations is

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<sup>184</sup> Section 15-11-39 was also amended by section 1 of Senate Bill No. 2266, chapter 159.

appropriated as a continuing appropriation for the purpose of funding the simulation laboratory program and the activities of the consortium.

**SECTION 8. AMENDMENT.** Subsection 5 of section 15-39.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

5. Shall submit to the legislative ~~council's~~ management's employee benefits programs committee any necessary or desirable changes in statutes relating to the administration of the fund.

**SECTION 9. AMENDMENT.** Subsection 3 of section 15.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

3. The superintendent of public instruction shall:
  - a. Compile the information required by this section in a manner that allows for accurate comparisons; and
  - b. Forward a copy of the compiled information to the governor and the ~~chairman of the~~ legislative council.

**SECTION 10. AMENDMENT.** Section 15.1-02-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-15. No Child Left Behind Act - Information required.** Whenever the superintendent of public instruction determines that any bill or amendment under consideration by an interim committee of the legislative ~~council~~ management or by a standing committee or a conference committee of the legislative assembly contains a provision required by the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301, et seq.] or by federal regulations promulgated to implement that Act, the superintendent shall provide the members of the appropriate committee with the specific language of the No Child Left Behind Act which sets forth the requirement, together with the statutory citation for that language, or the specific language of the federal regulations which sets forth the requirement, together with the citation for the regulations.

**SECTION 11. AMENDMENT.** Subsection 3 of section 15.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

3. If the superintendent of public instruction, after receipt and consideration of an application for a waiver of a rule governing the accreditation of schools under this section approves the waiver, the superintendent shall file a report with a ~~committee designated by~~ the legislative council. The report must cite the accreditation rule that was waived, provide a detailed account of the reasons for which the rule was waived, and state the time period for which the rule was waived. If the superintendent of public instruction denies an application for a waiver under this section, the superintendent shall file a notice of denial with the ~~committee designated by the~~ legislative council. If requested by the ~~chairman of the committee~~, the superintendent shall appear ~~before the committee~~ and respond to questions regarding the approval or denial of any application for a waiver.

**SECTION 12. AMENDMENT.** Subsection 4 of section 15.1-06-08.1 of the North Dakota Century Code is amended and reenacted as follows:

4. If the superintendent of public instruction, after receipt and consideration of an application for a waiver under this section, approves the waiver, the superintendent shall file a report with a ~~committee designated by the legislative council~~. The report must provide a detailed account of the reasons for which the waiver was granted and the specific time period for the waiver. If the superintendent of public instruction denies an application for a waiver under this section, the superintendent shall file a notice of denial with the ~~committee designated by the legislative council~~. If requested by the ~~chairman of the committee~~, the superintendent shall appear ~~before the committee~~ and respond to questions regarding the approval or denial of any application for a waiver under this section.

**SECTION 13. AMENDMENT.** Section 15.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-10. Test scores - Publication.** Upon receiving notice that the compilation of test scores has been completed, the superintendent of public instruction shall inform the legislative council. The superintendent shall present the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative ~~council~~ management. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, the established cut scores, the methodology used to determine the cut scores, the validation of all test products, and the significance of the test scores.

**SECTION 14. AMENDMENT.** Section 16.1-01-17 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-17. Estimated fiscal impact of an initiated measure.** At least ninety days before a statewide election at which an initiated measure will be voted upon, the legislative council shall coordinate the determination of the estimated fiscal impact of the initiated measure. Upon notification from the secretary of state that signed petitions have been submitted for placement of an initiated measure on the ballot, the legislative ~~council~~ management shall hold hearings, receive public testimony, and gather information on the estimated fiscal impact of the measure. Each agency, institution, or department shall provide information requested in the format and timeframe prescribed by the legislative council ~~or its designated committee~~ for identifying the estimated fiscal impact of an initiated measure. At least thirty days ~~prior to before~~ the public vote on the measure, the legislative council shall submit a statement of the estimated fiscal impact of the measure to the secretary of state. Upon receipt, the secretary of state shall include a notice within the analysis required by section 16.1-01-07 specifying where copies of the statement of the estimated fiscal impact can be obtained. Within thirty days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the legislative ~~council~~ management under this section shall submit a report to the legislative council on the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated measure and a comparison to the estimates provided to the legislative ~~council~~ management under this section and the legislative council shall issue a report of the actual fiscal impact of the initiated measure.

**SECTION 15. AMENDMENT.** Subsection 5 of section 18-11-15 of the North Dakota Century Code is amended and reenacted as follows:

5. With the consent of the governing body of the city involved, upon the advice of its actuary that the pension schedule can be implemented on an actuarially sound basis and notification to the legislative ~~council's~~ management's employee benefits programs committee, and in substitution for the pension payment schedule provided in subsection 1, 3, or 4, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amount:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
10	50	20%
11	50	22%
12	50	24%
13	50	26%
14	50	28%
15	50	30%
16	50	32%
17	50	34%
18	50	36%
19	50	38%
20	50	40%
21	51	43%
22	52	46%
23	53	49%
24	54	52%
25	55	55%
26	56	58%
27	57	61%
28	58	64%
29	59	67%
30	60	70%

**SECTION 16. AMENDMENT.** Section 24-02-46 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-46. Multistate highway transportation agreement.** The director may join the multistate highway transportation agreement to promote uniformity among participating jurisdictions in vehicle size and weight standards. The legislative council shall review the guidelines for eligible voting members of the cooperating committee formed by the agreement and the legislative management shall appoint a member of the house standing transportation committee and a member of the senate standing transportation committee or their designees as the legislative members representing this state to the cooperating committee formed by the agreement.

**SECTION 17. AMENDMENT.** Subsection 3 of section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The appointments and terms of committee members are as follows:
  - a. The governor shall appoint two committee members for two-year terms, beginning on August first in each even-numbered year.

- b. The legislative ~~council~~ management shall appoint one member from each house of the legislative assembly for two-year terms, beginning on August first in each odd-numbered year.
- c. The governing board of the arc of North Dakota shall appoint one committee member for a three-year term, beginning August first in each year that is evenly divisible by three.
- d. The governing board of a North Dakota nonprofit advocacy group for people with disabilities shall appoint one committee member for a three-year term, beginning on August first in each year that is divisible by three with a remainder of one. Whenever an appointment to this position is to be made, the other members of the committee shall select a North Dakota nonprofit advocacy group for people with disabilities to make this appointment.
- e. The governing board of the mental health association in North Dakota shall appoint one committee member for a three-year term, beginning on August first in each year that is divisible by three with a remainder of two.

**SECTION 18. AMENDMENT.** Subsection 3 of section 25-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The governing body must be composed of the executive director of the department of human services; the director of the division of mental health services of the department, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; a representative of the fiscal management of the state hospital; a mental health services consumer selected by the mental health association; and a legislator selected by the legislative ~~council~~ management. The governing body may include other persons as appointed by the governing body.

<sup>185</sup> **SECTION 19. AMENDMENT.** Section 26.1-36.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36.4-06. Modified community rating.** Premium rates for individual policies are subject to the following:

1. For any class of individuals, the premium rates charged during a rating period to the individuals in that class for the same or similar coverage may not vary by a ratio of more than six to one after August 1, 1995, and by a ratio of more than five to one after August 1, 1996, when age, industry, gender, and duration of coverage of the individuals are considered. Gender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997.

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<sup>185</sup> Section 26.1-36.4-06 was also amended by section 1 of House Bill No. 1196, chapter 258.

2. An insurer, in addition to the factors set forth in subsection 1, may use geography, family composition, healthy lifestyles, and benefit variations to determine premium rates.
3. The commissioner shall design and adopt reporting forms to be used by an insurer to report information as to insurer's experience as to insurance provided under this chapter on a periodic basis to determine the impact of the reforms and implementation of modified community rating contained in this chapter and the commissioner shall report to the legislative assembly or a ~~committee designated by~~ the legislative council the findings of the commissioner.

**SECTION 20. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-03. Emergency rules.**

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
  - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
  - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
  - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
  - d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the ~~office of the~~ legislative council with the final adopted emergency rule.
5. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them.
6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

**SECTION 21. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-06. Force and effect of rules.** Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the ~~office of the~~ legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

**SECTION 22. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-07. Deadline for rules to implement statutory change.** Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the ~~office of the~~ legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

**SECTION 23. AMENDMENT.** Subsection 1 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the ~~office of the~~ legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the ~~office of the~~ legislative council must be accompanied by a copy of the proposed rules.
  - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

<sup>186</sup> **SECTION 24. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-15. Filing of rules for publication - Effective date of rules.**

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the ~~office of the~~ legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the ~~office of the~~ legislative council and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
  - (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.
  - (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
  - (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
  - (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

**SECTION 25. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-17. Administrative rules committee objection.** If the legislative ~~council's~~ management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file

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<sup>186</sup> Section 28-32-15 was also amended by section 1 of Senate Bill No. 2026, chapter 277.

that objection in certified form ~~in the office of~~ with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

1. The ~~office of the~~ legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The ~~office of the~~ legislative council also shall ~~also~~ maintain a permanent register of all committee objections.
2. The ~~office of the~~ legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
4. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

**SECTION 26. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.**

1. The legislative ~~council's~~ management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.
  - e. Arbitrariness and capriciousness.

- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the ~~office of the~~ legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative ~~council~~ management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative ~~council~~ management for review by the legislative ~~council~~ management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the ~~office of the~~ legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative ~~council~~ management has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 27. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-19. Publication of administrative code and code supplement.**

1. The ~~office of the~~ legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must ~~also~~ contain all objections filed with the ~~office of the~~ legislative council by the administrative rules committee pursuant to section 28-32-17. ~~The code must be printed or otherwise duplicated in looseleaf form.~~ The ~~office of the~~ legislative council shall revise all or part of the code as often as the legislative council ~~deems~~ determines necessary.
2. The ~~office of the~~ legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the ~~office of the~~ legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as ~~deemed~~ determined proper. The ~~office of the~~ legislative council shall keep and

maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

3. The ~~office of the~~ legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
  - a. The code supplement must contain all rules that have been filed with the ~~office of the~~ legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
  - b. The code supplement must contain all objections filed with the ~~office of the~~ legislative council by the administrative rules committee pursuant to section 28-32-17.
  - e. ~~The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.~~
4. The ~~office of the~~ legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the ~~office of the~~ legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge a fee for a copy of the rules as allowed under section 44-04-18.

**SECTION 28. AMENDMENT.** Section 28-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-20. Printing, sales, and distribution of code and code supplement.**

1. The secretary of state shall distribute the code and code supplement and shall distribute copies of the code, revisions, and the code supplement without charge to the following:
  - a. Governor, one copy.
  - b. Attorney general, one copy.
  - c. Each supreme court judge, one copy.
  - d. Each district court judge, one copy.

- e. Each county auditor of this state, for the use of county officials and the public, one copy.
  - f. Supreme court library, one copy.
  - g. State library, one copy.
  - h. Law library of the university of North Dakota, one copy.
  - i. Each of the five depository libraries in this state, one copy, upon request.
  - j. Secretary of state, one copy.
  - k. Legislative council, four copies.
  - l. Each member of the legislative assembly, one copy, upon request.
2. ~~The office of the~~ legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions and the code supplement.
  3. The secretary of state shall make copies of and subscriptions to the code and code supplement available to any person upon payment of the appropriate subscription fee.
  4. ~~The office of the~~ legislative council shall determine the appropriate fee for subscribing to the code and code supplement.
  5. All fees collected by the secretary of state must be deposited in the general fund of the state treasury.
  6. ~~The~~ If applicable, the administrative code, revisions to the administrative code, and the code supplement must be considered sixth-class printing under sections 46-02-04 and 46-02-09.

**SECTION 29. AMENDMENT.** Subsection 3 of section 34-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Employee" means any person, whether employed, appointed, or under contract, providing services for the state, county, city, or other political subdivision, for which compensation is paid. "Employee" also includes a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision. "Employee" does not include:
  - a. A person elected to public office in the state or in a political subdivision.
  - b. A member of the legislative council ~~staff~~.
  - c. A person holding an appointive statutory office.

- d. One deputy or principal assistant for each elected official or appointive statutory official.
- e. One secretary for each elected or appointive statutory official.
- f. All members of the governor's staff.

<sup>187</sup> **SECTION 30. AMENDMENT.** Subsection 2 of section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The department of commerce division of community services shall:
  - a. Review all applications for renaissance zone designation against the criteria established in this section and designate zones.
  - b. Approve or reject the duration of renaissance zone status as submitted in an application.
  - c. Approve or reject the geographic boundaries and total area of the renaissance zone as submitted in an application.
  - d. Promote the renaissance zone program.
  - e. Monitor the progress of the designated renaissance zones against submitted plans in an annual plan review.
  - f. Report on renaissance zone progress to the governor and the legislative ~~council~~ management on an annual basis until all designated zones expire.

**SECTION 31. AMENDMENT.** Section 44-04-18.6 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.6. Access to legislative records and information.** The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative management, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a record of a purely personal or private nature, a record that is ~~attorney~~ legislative council work product or is ~~attorney-client~~ legislative council-client communication, a record that reveals the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

**SECTION 32. AMENDMENT.** Section 48-08-04 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>187</sup> Section 40-63-03 was also amended by section 1 of House Bill No. 1428, chapter 354, and section 2 of Senate Bill No. 2060, chapter 353.

**48-08-04. Use of legislative assembly rooms and halls.** During the interim between legislative sessions, the committee rooms, halls, passageways, and other space in the capitol used by the legislative assembly may not be used without authorization of the legislative council ~~or its designee~~.

**SECTION 33. AMENDMENT.** Section 48-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**48-10-01. Capitol grounds planning commission.** The capitol grounds planning commission consists of the lieutenant governor as chairman and eight other members selected biennially as provided in this section. The governor shall appoint two citizens, one licensed architect, and one representative from the state historical society as members, the president of the senate shall appoint two senators as members, and the speaker of the house of representatives shall appoint two representatives as members. Appointment to the commission is for a term of two years. Legislative and citizen members of the planning commission are entitled to per diem payments and expenses in such amount and in the same manner as provided by law for members of the legislative ~~council~~ management.

**SECTION 34. AMENDMENT.** Subsection 4 of section 49-23-03 of the North Dakota Century Code is amended and reenacted as follows:

4. A nonprofit corporation shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.
  - a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative ~~council~~ management, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative ~~council~~ management. The legislative council shall pay the compensation for the legislative members.

- b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. The notification center must be in operation by March 1, 1998.

<sup>188</sup> **SECTION 35. AMENDMENT.** Subsections 3 and 4 of section 50-09-29 of the North Dakota Century Code are amended and reenacted as follows:

3. If the department of human services determines, subject to the approval of the legislative ~~council~~ management, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
4. If the department of human services determines, subject to the approval of the legislative ~~council~~ management, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.

**SECTION 36. AMENDMENT.** Section 52-02-18 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>188</sup> Section 50-09-29 was also amended by section 1 of Senate Bill No. 2260, chapter 522.

**52-02-18. Independent performance audit.** The state auditor shall, upon request of the legislative audit and fiscal review committee, shall cause a performance audit of job service North Dakota to be conducted within twelve months after receipt of the request. The state auditor may appoint an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit or the state auditor may conduct the performance audit. If the state auditor completes the audit, the state auditor may contract with a consulting firm to aid in the state audit or to complete the audit and shall charge job service North Dakota for the audit, including the services of the consulting firm. The executive director of job service North Dakota and the auditor shall present the audit report and any action taken as a result of the audit to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit.

**SECTION 37. AMENDMENT.** Section 54-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-02. When legislative assembly meets.**

1. The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes and shall thereafter recess until the time provided in subsection 2.
2. The legislative assembly shall reconvene at twelve noon on the first Tuesday after the third day in January of the year following the organizational session as provided in subsection 1 or at twelve noon on a date selected by the legislative council management but not earlier than January second nor later than January eleventh of the year following the organizational session and, following the close of business of the regular session, shall adjourn subject to subsection 3.
3. Notwithstanding a motion to adjourn sine die, the legislative assembly shall reconvene as determined by the legislative council management. The number of natural days used may not exceed the number of natural days available under the constitution which have not been previously used by that legislative assembly in regular session under subsection 2.

**SECTION 38. AMENDMENT.** Section 54-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-04. Organizational session - Calling to order - Officers - Term of office - Officers and chairmen to remain in office during special session.** The secretary and officers of the senate and chief clerk and officers of the house serving at the close of a regular session, unless otherwise removed, shall remain in office until the first day of the organizational session. On the first day of the organizational session, at a time scheduled by the legislative council management pursuant to section 54-03.1-02, the president of the senate and the speaker of the house from the previous session, if reelected, or in the speaker's absence a member of the majority party of the house with seniority based upon terms of service in the house, shall call the members of their respective houses so enrolled to order. In the absence of the president of the senate, the president pro tempore shall call the members of the senate to order. In the absence of both the president of the senate and the president pro tempore, then some member or other person selected by the members present shall call the members of the senate to order. If the speaker of the

house from the previous session is not reelected and if no party has a majority in the house, the member of the house with seniority based upon terms of service in the house shall call the house to order. If two or more members of the house are tied for seniority and seniority is a factor in determining who shall call the house to order, the persons so tied for seniority shall draw lots to determine who shall call the house to order. The members of the respective houses then may proceed to the election of the necessary officers. The secretary and officers of the senate and chief clerk and officers of the house of representatives, and the chairmen of all procedural and substantive standing legislative committees shall continue to serve in those positions during any special legislative session which may be called, except in case of the death, resignation, or removal of one of those persons, whereupon the position must be filled, upon the convening of the special session, in the manner provided by law or legislative rule. Members serving on procedural or substantive standing committees of the senate or house during a regular session shall continue to serve on those committees during any special legislative session which may be called following that regular session.

**SECTION 39. AMENDMENT.** Section 54-03-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-19.2. Meetings - Powers and duties - Expenses.** The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each biennium. The commission shall determine levels of legislative compensation, expense allowance, and insurance benefits to be paid for service upon interim committees and during legislative sessions, which permit citizens to hold legislative office without undue financial sacrifice or disadvantage. In formulating recommendations, the commission may consult with the leadership of the legislative assembly, and review compensation, expense allowance, and insurance benefits for legislative service in other states and in other areas of state and federal service and private industry. The commission shall report its findings and recommendations regarding legislative compensation policy to the legislative assembly. The commission may file with the legislative council a bill incorporating its recommendations. Members of the legislative compensation commission must be compensated for time spent in attendance at meetings of the commission and for other travel as approved by the chairman of the legislative ~~council~~ management at the rate of sixty-two dollars and fifty cents per day and must be reimbursed for their actual and necessary expenses incurred in the same manner as other state officials. The expense allowance must be paid from appropriations then in effect for the legislative assembly. The commission may solicit the assistance of the ~~staff of the~~ legislative council to provide information, aid, and assistance in carrying out its duties.

<sup>189</sup> **SECTION 40. AMENDMENT.** Subsection 2 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>189</sup> Section 54-03-20 was also amended by section 97 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386.

2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of nine hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session.
- b. Notwithstanding subdivision a:
  - (1) A member of the legislative assembly may elect to be reimbursed for less than the amount to which the legislator is entitled under this subsection by claiming the lesser amount on a voucher submitted with the receipt required by section 44-08-04.
  - (2) The legislative ~~council~~ management may establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled under subdivision a.

<sup>190</sup> **SECTION 41. AMENDMENT.** Section 54-03-26 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-26. Personal computers and associated software used by legislators - Fee - Continuing appropriation.** Notwithstanding any other provision of law, a member of the legislative assembly who is assigned a computer may use that computer and its associated equipment and software for any use that is not in violation of section 16.1-10-02 upon payment of a computer usage fee established by the legislative ~~council~~ management.

**SECTION 42. AMENDMENT.** Section 54-03-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-27. Service in the legislative assembly - Leave of absence from employment.** The executive officer in charge of a state agency, department, or institution or the governing body of any political subdivision or any other employer in this state may grant a leave of absence from employment to a full-time employee of that governmental entity or of that employer who is a member of the legislative assembly for service during any regular or special session of the legislative assembly and for attendance at a meeting of the legislative ~~council~~ management or any of its committees. The leave of absence may be without pay, and the employer may reduce or eliminate the payment of any additional benefits normally due the employee while the employee is performing legislative service. If the leave of absence is granted, the employer may not terminate the employment of an employee solely due to the fact that the employee is absent from employment as the result of service in the legislative assembly.

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<sup>190</sup> Section 54-03-26 was also amended by section 1 of House Bill No. 1178, chapter 457.

**SECTION 43. AMENDMENT.** Section 54-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-03.1-02. Time and place of meeting - Who must attend.** In each even-numbered year on the first Monday in the month of December or on a date selected by the legislative ~~council~~ management but not earlier than December first nor later than December fifteenth, all persons elected at the previous November general election as members of the succeeding legislative session, and members whose terms do not expire until the first day of December following the next November general election, shall meet in the state capitol in the city of Bismarck, or at such other place as may be designated, at a time designated by the legislative ~~council~~ management for the purpose of conducting an organizational session. The legislative ~~council~~ management shall call the organizational session and the legislative council shall make such arrangements as may be necessary for ~~its~~ operation of the session.

**SECTION 44. AMENDMENT.** Section 54-03.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-03.2-02. Definitions.** As used in this code:

1. "Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.
2. "Investigating committee" means any of the following:
  - a. A standing or select committee of either house of the legislative assembly.
  - b. A joint committee of both houses.
  - c. An authorized subcommittee of a legislative committee.
  - d. The legislative ~~council~~ management and any interim committee of the ~~council~~ legislative management if specifically designated by the ~~council~~ legislative management as an investigating committee with subpoena powers.
  - e. Any other body created by law, the members of which may include nonlegislators.

Investigating committees ~~shall~~ have the power to issue subpoenas and subpoenas duces tecum in the manner provided for in section 54-03.2-08. Nothing in this chapter may be construed as in derogation of any power to issue subpoenas which is inherent in the legislative assembly or any of its committees.

3. "Public hearing" means any hearing open to the public or the proceedings of which are made available to the public.

**SECTION 45. AMENDMENT.** Section 54-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-05.1-02. Applicability - Meaning of lobbyist.**

1. This chapter applies to any person who, in any manner whatsoever, directly or indirectly, performs any of the following activities:
  - a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
  - b. Attempts to influence decisions made by the legislative ~~council~~ management or by an interim committee of the legislative ~~council~~ management.
2. This chapter does not apply to any person who is:
  - a. A legislator.
  - b. A private citizen appearing on the citizen's own behalf.
  - c. An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person's official capacity.
  - d. Invited by the chairman of the legislative ~~council~~ management, an interim committee of the legislative ~~council~~ management, or a standing committee of the legislative assembly to appear before the ~~council~~ legislative management, interim committee, or standing committee for the purpose of providing information.
  - e. An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.
3. For the purposes of this chapter, persons required to register under this chapter because of the performance of the activities described in subsection 1 must be known as "lobbyists".

<sup>191</sup> **SECTION 46. AMENDMENT.** Subsections 3 and 4 of section 54-06-25 of the North Dakota Century Code are amended and reenacted as follows:

3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative

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<sup>191</sup> Section 54-06-25 was also amended by section 97 of House Bill No. 1436, chapter 482.

~~council management~~ at the biennial meeting at which the legislative ~~council management~~ receives the reports of its interim committees.

4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day in attendance at commission meetings in the same manner as provided for members of the legislative ~~council management~~ and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.

<sup>192</sup> **SECTION 47. AMENDMENT.** Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-31. State employee recruitment and retention bonus programs - Criteria - Limitations.** State agencies may develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
  - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
  - b. The agency has filed a copy of the written policy with the North Dakota human resource management services; and
  - c. The agency reports to the North Dakota human resource management services each bonus provided to an employee under the program.
2. State agencies must fund bonus programs from within the agency salaries and wages budget.
3. The North Dakota human resource management services shall report periodically ~~report to a legislative committee designated by the legislative ~~council management~~~~ on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.
4. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

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<sup>192</sup> Section 54-06-31 was also amended by section 1 of House Bill No. 1031, chapter 459.

**SECTION 48. AMENDMENT.** Section 54-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-01. Council Legislative management - Created - Members - Vacancy - Terms.** The North Dakota legislative council, in this chapter referred to as the legislative council or the council, management consists of the majority and minority leaders of the house and of the senate plus six senators and seven representatives chosen biennially before the close of each regular legislative session. In the house of representatives the speaker of the house shall appoint to the council legislative management four members recommended by the majority leader and three members recommended by the minority leader, except that the speaker must by virtue of office be one of the four members appointed from the speaker's faction. In the senate the lieutenant governor shall appoint to the council legislative management four members recommended by the majority leader and two members recommended by the minority leader. Any vacancy occurring when the legislative assembly is not in session must be filled by the selection of another member of the legislative assembly belonging to the same faction as the member originally appointed, the selection to be made by the remaining senate or house members of the council legislative management, depending upon which body has the vacancy. Each senator and each representative chosen to serve on the council legislative management shall serve until a new council legislative management has been selected at the next regular legislative session; provided, however, that no senator, not a holdover, who is not reelected to the senate, and no representative, who is not reelected to the house of representatives, may serve as a member of the council legislative management beyond the closing day of the term to which elected. Any vacancy occurring because any member of the council legislative management is not reelected must be filled for the period from the beginning of the session until a new council legislative management is selected, in the same manner as the original council legislative management is selected.

**SECTION 49. AMENDMENT.** Section 54-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02. Powers and duties.** In addition to the other applicable provisions of this chapter, the council legislative management has the following powers and duties:

1. To study, consider, accumulate, compile, and assemble information on any subject upon which the legislative assembly may legislate, and upon such subjects as the legislative assembly may by concurrent or joint resolution authorize or direct, or any subject requested by a member of the legislative assembly; provided, that the council legislative management may screen and prioritize studies assigned by concurrent or joint resolution to maintain its workload within the limitations of time and legislative appropriations.
2. To collect information concerning the government and general welfare of the state and of its political subdivisions.
3. To study and consider important issues of public policy and questions of general interest.
4. To study and promote uniformity of legislation in the United States upon subjects upon which uniformity is desirable and to ~~confer with the commissioners or similar groups appointed for the same purpose by any other state in drafting uniform laws to be submitted for the approval and~~

adoption by the several states and through such member or members or council staff persons as the council may appoint to meet annually with the conference of commissioners on uniform state laws for the promotion of uniformity of legislation in the United States and join with it in such measures as may be deemed most expedient to advance the objects of such conference. The council shall receive, review, and make recommendations on uniform and model laws recommended to it by the state commission on uniform state laws.

5. To prepare proposed bills and resolutions for consideration of the succeeding legislative assembly.
6. To call to its assistance other members of the legislative assembly, and it may create committees consisting of its own members, or one or more of its own members and one or more other members of the legislative assembly and delegate by written resolution to such committees such of its powers and rights as it may deem advisable. Committees of the ~~council~~ legislative management may also include nonlegislator members. Any member of the legislative assembly has the right to attend any meeting of the ~~council~~ legislative management and may present that member's views on any subject which the ~~council~~ legislative management may at any particular time be considering.
7. To issue subpoenas or subpoenas duces tecum in the manner provided in sections 54-03.2-08 and 54-03.2-09. Committees of the ~~council~~ legislative management may issue subpoenas and subpoenas duces tecum in the same manner if specifically authorized by the ~~council~~ legislative management. Failure to obey a subpoena issued by the ~~council~~ legislative management, or one of its committees, is contempt.
8. To control the use of the legislative chambers and permanent displays in memorial hallway. Guidelines may be established pursuant to this subsection and the legislative council, ~~or its designee~~, shall administer any guidelines ~~which~~ that are established.
9. To determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents. This authority may not be exercised in a manner that contravenes access to legislative documents as otherwise provided by law.

**SECTION 50. AMENDMENT.** Section 54-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.1. Legislative audit and fiscal review committee.** For the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state, the ~~legislative council management~~ shall ~~create a division of the budget section of the legislative council entitled~~ appoint the legislative audit and fiscal review committee. The members of the committee must be appointed in the same manner as other members of ~~legislative council interim~~ committees of the legislative management.

**SECTION 51. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.** ~~It is the duty of the~~ The legislative audit and fiscal review committee ~~to~~ shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, ~~to~~ confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general ~~deems~~ determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general shall immediately shall prosecute such official or employee as provided by law. The legislative ~~council~~ management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by ~~it~~ the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as ~~it~~ the legislative management may ~~deem~~ determine necessary.

**SECTION 52. AMENDMENT.** Section 54-35-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.3. Employee benefits programs committee - Appointment - Selection of chairman.** The legislative ~~council~~ management, during each biennium, shall appoint an employee benefits programs committee in the same manner as the ~~council~~ legislative management appoints other interim committees. The ~~council~~ legislative management shall appoint five members of the house of representatives and four members of the senate to the committee. The ~~council~~ legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative ~~council~~ management interim committees.

**SECTION 53. AMENDMENT.** Section 54-35-02.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.4. Employee benefits programs committee - Powers and duties.**

1. The employee benefits programs committee shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction,

including an actuarial review. The committee shall take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee must include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative ~~council~~ management and to the legislative assembly.

2. To carry out its responsibilities, the committee, or its designee, may:
  - a. Enter ~~into~~ contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. Each retirement, insurance, or retiree insurance program shall pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.
  - b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
  - c. Establish rules for its operation, including the submission and review of proposals and the establishing of standards for actuarial review.
3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to it by the legislative assembly or the legislative ~~council~~ management.
4. A copy of the committee's report concerning any legislative measure shall, if that measure is introduced for consideration by a legislative assembly, be appended to the copy of that measure which is referred to a standing committee.
5. A legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be introduced in either house unless it is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether any legislative measure affects a program.
6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be considered by a standing committee unless it is accompanied by a report from the employee benefits programs committee.
7. Any legislation enacted in contravention of this section is invalid and of no force and effect, and any benefits provided under such legislation must be reduced to the level current prior to enactment.

**SECTION 54. AMENDMENT.** Section 54-35-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.5. Administrative rules committee.** The legislative ~~council~~ management, during each biennium, shall appoint an administrative rules committee in the same manner as the ~~council~~ legislative management appoints other interim committees. The legislative ~~council~~ management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative ~~council~~ management interim committees. The membership of the administrative rules committee must include at least one of the members who served during the most recently completed regular session of the legislative assembly from each of the standing committees of either the house of representatives or the senate.

**SECTION 55. AMENDMENT.** Section 54-35-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.6. Rules reviewed by administrative rules committee - Committee responsibility.** The administrative rules committee shall review administrative rules adopted under chapter 28-32. The committee shall consider oral and written comments received concerning administrative rules. The committee shall study and review administrative rules and related statutes to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or with statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative ~~council~~ management for the amendment or repeal of statutes relating to administrative rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code does not prevent rules from taking effect. Except for action pursuant to section 28-32-17 or 28-32-18, the recommendations or opinions of the committee do not affect the legality of any rule as determined by the attorney general.

<sup>193</sup> **SECTION 56. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.7. Garrison diversion overview.** The legislative ~~council~~ management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.

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<sup>193</sup> Section 54-35-02.7 was also amended by section 1 of Senate Bill No. 2336, chapter 502.

**SECTION 57. AMENDMENT.** Section 54-35-02.8 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.8. Legislative ethics committee.** The legislative ~~council~~ management, during each biennium, shall appoint an ethics committee to consider or prepare a legislative code of ethics. The committee may recommend legislation relating to legislative ethics. The committee shall operate according to the laws and procedures governing the operation of other legislative ~~council~~ management interim committees.

**SECTION 58. AMENDMENT.** Section 54-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-03. State departments, officers, and employees to cooperate.** Each department, board, commission, agency, officer, or employee in the state government shall furnish such information and render such assistance to the legislative council and to the legislative management as the legislative council or the legislative management or its committees may from time to time request.

**SECTION 59. AMENDMENT.** Section 54-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-04. Meetings - When held - How called - Quorum.** The ~~council~~ legislative management or committee appointed by it, may sit at such time and place as it may deem advisable, but the ~~council~~ legislative management shall meet at least once in each year and shall meet at any time upon the call of the chairman or a call signed by seven members of the ~~council~~ legislative management. At any meeting of the ~~council~~ legislative management, seven members constitute a quorum and a majority of such quorum has the authority to act in any matter falling within the jurisdiction of the ~~council~~ legislative management.

**SECTION 60. AMENDMENT.** Section 54-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-05. Governor sending messages to meetings.** The governor may send messages to such meetings of the ~~council~~ legislative management as the governor ~~deems~~ determines advisable.

**SECTION 61. AMENDMENT.** Section 54-35-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-06. Officers - Accept funds - Expenditures.** The ~~council~~ legislative management shall select a chairman and a vice chairman from its own members and may prescribe its own rules of procedure. ~~‡~~ The legislative management may appoint a secretary who need not be a member, and shall appoint a director who must be in charge of the ~~offices and staff of the~~ legislative council and who must be paid such salary as the ~~council~~ legislative management may determine. The ~~council~~ director may employ such ~~other~~ persons and obtain the assistance of such research agencies as it ~~may deem~~ determined necessary. The legislative management and the legislative council ~~is authorized to may~~ accept and use any funds made available to it through the terms of any agreement that it may make made with any agency whatsoever for the accomplishment of the purpose of this chapter. Expenditures of funds made available to the council by legislative appropriation must be made in accordance with rules or motions duly approved by the ~~council~~ legislative management.

**SECTION 62. AMENDMENT.** Section 54-35-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-07. Records - Reports.** The ~~council~~ legislative management shall keep minutes of its meetings and a record of all its transactions and shall at the beginning of each biennial legislative session, and may at any other time, make a report of its activities and recommendations to the members of the legislative assembly and to the governor.

**SECTION 63. AMENDMENT.** Section 54-35-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-08. Recommended legislation may be required in advance.** The ~~council~~ legislative management may require that any recommendation for legislation, which is to be presented by any department, board, commission, agency, officer, official, or employee of the state desiring the consideration of the ~~council~~ legislative management, be presented to it at least sixty days in advance of any regular legislative session.

**SECTION 64. AMENDMENT.** Section 54-35-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-09. Recommendations - When made public - Distribution.** The recommendations of the ~~council~~ legislative management must be completed and made public prior to any session of the legislative assembly at which such recommendations are to be submitted; and a copy of ~~said~~ the recommendations must be ~~mailed~~ distributed to each member-elect of the legislative assembly, to each elective state officer, and to the state law library.

<sup>194</sup> **SECTION 65. AMENDMENT.** Section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-10. (Effective through June 30, 2009) Compensation of members and leadership.**

1. The members of the ~~council~~ legislative management and the members of any committee of the ~~council~~ legislative management are entitled to be compensated for the time spent in attendance at sessions of the ~~council~~ legislative management and of its committees at the rate of one hundred eight dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the ~~council~~ shall legislative management is entitled to receive an additional five dollars for each day spent in attendance at sessions of the ~~council~~ legislative management and of its committees, and the chairman of each of the ~~council's~~ legislative management's committees ~~shall~~ is entitled to receive five dollars for each day spent in attendance

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<sup>194</sup> Section 54-35-10 was also amended by section 8 of Senate Bill No. 2064, chapter 386, and section 9 of Senate Bill No. 2064, chapter 386.

at sessions of the ~~council~~ legislative management or of the committee which the person chairs.

**(Effective after June 30, 2009) Compensation of members and leadership.**

1. The members of the ~~council~~ legislative management and the members of any committee of the ~~council~~ legislative management are entitled to be compensated for the time spent in attendance at sessions of the ~~council~~ legislative management and of its committees at the rate of one hundred thirty-five dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the ~~council~~ shall legislative management is entitled to receive an additional five dollars for each day spent in attendance at sessions of the ~~council~~ legislative management and of its committees, and the chairman of each of the ~~council's~~ legislative management's committees ~~shall~~ is entitled to receive five dollars for each day spent in attendance ~~at sessions of the~~ at sessions of the ~~council~~ legislative management or of the committee which the person chairs.

**SECTION 66. AMENDMENT.** Section 54-35-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-11. Preparation for and assistance to legislative assembly - Custody of equipment - Approval of delayed vouchers.** The legislative council ~~is hereby authorized~~, on behalf of the legislative assembly, ~~to~~ may make all necessary arrangements ~~prior to before~~ for each legislative session; for the procurement of necessary supplies, equipment, services; ~~excluding other than~~ the employment of legislative employees, building space, or any other preparations or arrangements ~~it deems~~ the legislative council determines necessary or desirable to be made ~~prior to before~~ the commencement of each legislative session in order to facilitate the proper convening and operation of the legislative assembly. The legislative council shall act as the custodial agency to ensure the proper storage and safekeeping of legislative supplies and equipment during the interim periods between legislative sessions, and ~~is authorized to~~ may approve vouchers on behalf of the legislative assembly; ~~or may authorize its director to do so~~; for the payment from legislative appropriations of delayed billings or other billings for legislative expenses during periods when the legislative assembly is not in session. ~~It~~ The legislative council shall; through its own actions or through its staff, carry out such duties or projects and provide such service and assistance to the legislative assembly or its committees, ~~the legislative management or its committees,~~ and members of the legislative assembly as may be requested by concurrent resolution of the legislative assembly or ~~deemed determined~~ deemed necessary or desirable in assisting the legislative assembly or ~~the legislative management in meeting its responsibilities and carrying out its duties during the legislative session or the interim between sessions.~~

**SECTION 67. AMENDMENT.** Section 54-35-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-12. Legislative budget analyst and auditor.** The legislative ~~council~~ management shall appoint a legislative budget analyst and auditor. A person is not eligible for the appointment unless the person holds a baccalaureate degree from a recognized institution of higher learning, is a certified public accountant, or has had

five years' experience in government accounting. The appointment of the legislative auditor must be based upon qualifications of eligible persons without reference to partisan politics. The salary of the legislative budget analyst and auditor must be determined by the legislative council and it may employ additional persons as necessary to carry out sections 54-35-12 through 54-35-14.

**SECTION 68. AMENDMENT.** Section 54-35-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-15. Information technology program - Staff - Powers and duties.**

1. The legislative council, ~~or its designee~~, shall provide information technology research and staff services to the legislative branch. The services must be provided in accordance with the existing statutory authority of the legislative council and within the framework of its other staff services.
2. The legislative council ~~staff office~~ shall provide information technology services, ~~and the council, or its designee~~, may hire such ~~additional~~ staff as are necessary, and set compensation for any additional staff within the limits of legislative appropriations.
3. The legislative council, ~~or its designee~~, shall structure the provision of information technology services and assistance to the legislative assembly and shall receive such cooperation and assistance from other state agencies as ~~it may~~ the council reasonably may request.

**SECTION 69. AMENDMENT.** Section 54-35-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-15.1. Information technology committee - Appointment.** The legislative ~~council~~ management, during each biennium, shall appoint an information technology committee in the same manner as the ~~council~~ legislative management appoints other interim committees. The ~~council~~ legislative management shall appoint six members of the house of representatives and five members of the senate to the committee. The chief information officer of the state is an ex officio, nonvoting member of the committee. The ~~council~~ legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative ~~council~~ management interim committees.

**SECTION 70. AMENDMENT.** Section 54-35-16 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-16. Authority to determine if legislative assembly meets.** The ~~council~~ legislative management may issue a call for the legislative assembly to convene after it has adjourned under subsection 2 of section 54-03-02. The length of a legislative session called under this section may not exceed the number of natural days available under the constitution which have not been used by that legislative assembly. The ~~council~~ legislative management may exercise this authority, and the legislative assembly shall meet, regardless of whether the motion to close the regular session of the legislative assembly was to recess to a time certain, adjourn to a time certain, or adjourn sine die.

**SECTION 71. AMENDMENT.** Section 54-35-17 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-17. Retention of legal counsel.** When the legislative assembly is in session, either house by resolution may authorize, or both houses by concurrent resolution may direct, the legislative council to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when ~~deemed~~ determined necessary or advisable to protect the official interests of the legislative branch. When the legislative assembly is not in session, the legislative ~~council~~ management, by a majority vote, may authorize the legislative council to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when ~~deemed~~ determined necessary or advisable to protect the official interests of the legislative branch. Section 54-12-08 does not apply to a person appointed or retained under this section.

**SECTION 72. AMENDMENT.** Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-18. (Effective through August 1, 2011) Energy development and transmission committee.** The legislative ~~council~~ management, during each biennium, shall appoint an energy development and transmission committee in the same manner as the ~~council~~ legislative management appoints other interim committees. The ~~council~~ legislative management shall appoint six members of the house of representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the senate, four of whom must be from the majority political party and two of whom must be from the minority political party. The chairman of the legislative ~~council~~ management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative ~~council~~ management interim committees. The committee shall study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy, and the taxation of shallow gas to reduce energy costs for all North Dakota residents.

**SECTION 73. AMENDMENT.** Section 54-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-22. Workers' compensation review committee.**

1. During each interim, a legislative ~~council~~ management's interim workers' compensation review committee must be appointed as follows: two members of the senate appointed by the majority leader of the senate of the legislative assembly; one member of the senate appointed by the minority leader of the senate of the legislative assembly; two members of the house of representatives appointed by the majority leader of the house of representatives; and one member of the house of representatives appointed by the minority leader of the house of representatives. The chairman of the legislative ~~council~~ management shall designate the chairman of the committee. The committee shall operate according to the laws and procedures governing the operation of other legislative ~~council~~ management interim committees. The committee may recommend legislation relating to workers' compensation. The committee shall meet once each calendar quarter or less often if the committee chairman determines a meeting that quarter is not necessary because there are no claims to review.

2. The committee shall review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. A claim may not be reviewed by the committee unless workforce safety and insurance has issued a final determination and either the injured worker has exhausted the administrative and judicial appeals process or the period for appeal has expired. In order for the committee to review a claim, the injured worker must first sign a release of information for constituent authorization to allow the committee and legislative council ~~staff~~ to review the injured worker's workforce safety and insurance records and to allow the committee members and workforce safety and insurance representatives to discuss the records in an interim committee hearing. Notwithstanding any open meeting requirements, except as otherwise provided under this section, the workforce safety and insurance records of an injured worker whose case is reviewed by the committee are confidential. However, pursuant to the constituent's authorization, information contained in the records may be discussed by the committee members and workforce safety and insurance representatives in an interim committee hearing.
3. The committee shall accept testimony of an injured worker and of a representative designated by the injured worker. After the committee has received the testimony of the injured worker and the injured worker's representative, the committee shall request that workforce safety and insurance provide testimony.

<sup>195</sup> **SECTION 74. AMENDMENT.** Section 54-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-23. (Effective through July 31, 2009) Committee on tribal and state relations - Membership - Duties.**

1. The committee on tribal and state relations is composed of seven members as follows:
  - a. The chairman of the legislative ~~council~~ management or the chairman's designee;
  - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
  - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.

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<sup>195</sup> Section 54-35-23 was also amended by section 1 of House Bill No. 1060, chapter 503.

2. The chairman of the legislative ~~council~~ management or the chairman's designee, shall serve as chairman of the committee.
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
4. The committee shall conduct joint meetings with the native American tribal citizens' task force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative ~~council~~ management.
5. The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
6. a. The native American tribal citizens' task force is composed of six members as follows:
  - (1) The executive director of the Indian affairs commission, or the executive director's designee;
  - (2) The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
  - (3) The chairman of the Spirit Lake Tribe, or the chairman's designee;
  - (4) The chairman of the Three Affiliated Tribes, or the chairman's designee;
  - (5) The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
  - (6) The chairman of the Sisseton-Wahpeton Sioux Tribe, or the chairman's designee.
- b. If the executive director of the Indian affairs commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian affairs commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

**SECTION 75. AMENDMENT.** Section 54-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-35.2-01. Advisory commission on intergovernmental relations - Membership - Terms - Meetings.**

1. The advisory commission on intergovernmental relations consists of twelve members:
  - a. The North Dakota league of cities executive committee shall appoint two members of the commission.
  - b. The North Dakota association of counties executive committee shall appoint two members of the commission.
  - c. The North Dakota township officers association executive board of directors shall appoint one member of the commission.
  - d. The North Dakota recreation and park association executive board shall appoint one member of the commission.
  - e. The North Dakota school boards association board of directors shall appoint one member of the commission.
  - f. The governor or the governor's designee is a member of the commission.
  - g. The legislative ~~council~~ management shall appoint four members of the legislative assembly as members of the commission.
2. The legislative ~~council~~ management shall designate the chairman and vice chairman of the commission.
3. All members of the commission shall serve for a term of two years, beginning July first of each odd-numbered year, and may be reappointed for additional terms.
4. If any member of the commission resigns or ceases to be a member of the class the member represents, that person's membership on the commission ceases immediately and the appropriate appointing authority may appoint a new member for the remainder of the term.
5. The commission shall meet at least semiannually.

**SECTION 76. AMENDMENT.** Section 54-35.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-35.2-02. Functions and duties.** The advisory commission on intergovernmental relations shall:

1. Serve as a forum for the discussion of resolution of intergovernmental problems.
2. Engage in activities and studies relating to the following subjects:
  - a. Local governmental structure.
  - b. Fiscal and other powers and functions of local governments.

- c. Relationships between and among local governments and the state or any other government.
  - d. Allocation of state and local resources.
  - e. Interstate issues involving local governments, including cooperation with appropriate authorities of other states.
  - f. Statutory changes required to implement commission recommendations.
3. Present reports and recommended legislative bills to the legislative ~~council~~ management for consideration in the same manner as ~~interim~~ legislative ~~council~~ management interim committees.
  4. Prepare model ordinances or resolutions for consideration by officials of political subdivisions.

**SECTION 77. AMENDMENT.** Section 54-35.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-35.2-04. Finances.**

1. A member of the advisory commission on intergovernmental relations who is a member of the legislative assembly is entitled to receive, from funds available to the commission, compensation per day for each day spent in attendance at commission meetings in the same amount as provided for members of the legislative ~~council~~ management and reimbursement for travel and other necessary expenses incurred in the performance of official duties in the amounts provided by law for other state officers. Members of the advisory commission on intergovernmental relations who are appointed by an organization representing political subdivisions may be reimbursed for attendance at commission meetings by the organization by which they were appointed.
2. The commission may apply for, contract for, receive, and expend for its purposes any appropriation or grant from any public or private source.
3. Political subdivisions of the state may appropriate funds to the commission to share in the cost of its operations.

**SECTION 78. AMENDMENT.** Section 54-35.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-35.2-05. Reports.** The advisory commission on intergovernmental relations shall report its findings and recommendations and any proposed legislation necessary to implement the recommendations to the legislative ~~council~~ management at the time and in the manner reports are made by interim committees of the legislative ~~council~~ management. The legislative ~~council~~ management may accept, reject, or amend the report of the advisory commission on intergovernmental relations. The legislative ~~council~~ management shall include the report, or any portion of it, as accepted, rejected, or amended, in the ~~council's~~ legislative management's final report. Copies of the report of the advisory commission on intergovernmental relations, as accepted, rejected, or amended by the legislative

~~council management~~, must be available to counties, cities, townships, appropriate state departments and agencies, and the public.

**SECTION 79. AMENDMENT.** Subsection 3 of section 54-40-01 of the North Dakota Century Code is amended and reenacted as follows:

3. An agency, department, or institution of this state may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized by law to perform. Any agreement entered under this subsection must be submitted to the legislative assembly or, if the legislative assembly is not in session, to the legislative ~~council~~ or a ~~committee designated by the legislative council~~ management for approval or rejection and may not become effective until approved by the legislative assembly or the legislative ~~council~~ management.

**SECTION 80. AMENDMENT.** Section 54-44.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-12.1. Implementation of legislative intent - Legislative objection to execution of budget - Effect of objection.**

1. The budget section of the legislative ~~council management~~ may object to any allotment made under section 54-44.1-12, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the budget section ~~deems~~ determines that the allotment or expenditure or the failure to make an allotment or expenditure is contrary to legislative intent as recorded in any reliable legislative records. The budget section shall file that objection in certified form ~~in the office of~~ with the legislative council. The filed objection must contain a concise statement of the budget section's reasons for the objection.
2. The ~~office of the~~ legislative council shall attach to each objection a certification of the time and date of the filing of the objection and, as soon as possible, shall transmit a copy of the objection and the certification to the director of the budget and the affected budget unit. The ~~office of the~~ legislative council shall maintain a permanent register of all objections under this section.
3. Within fourteen days after the filing of an objection, the affected budget unit shall respond in writing to the budget section. After receipt of that response, the budget section may withdraw or modify its objection.
4. After the filing of an objection, the burden of persuasion is upon the budget unit in any action for judicial review of whether the allotment or expenditure or the failure to make an allotment or expenditure is contrary to law. If the budget unit fails to meet its burden of persuasion, the court shall render judgment against the budget unit for court costs. These court costs must include reasonable attorney's fees and must be payable from the appropriation of the budget unit.

**SECTION 81. AMENDMENT.** Section 54-52.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-08.2. Uniform group insurance program - Compliance with federal requirements - Group purchasing arrangements.** If the board determines

that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative council's management's employee benefits programs committee. The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

**SECTION 82. AMENDMENT.** Section 54-55-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-55-01. Commission on uniform state laws - Membership.** The commission on uniform state laws consists of an individual engaged in the practice of law in this state, the dean or a full-time member of the faculty of the law school of the university of North Dakota, a law-trained judge of a court of record in this state, a member of the house of representatives and a member of the senate of the legislative assembly, and a member of the legislative council staff. The commission also consists of any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the national conference of commissioners on uniform state laws, and may also consist of any residents of this state who have been previously appointed to at least five years of service on the commission. Commissioners, except the members of the legislative assembly, the member of the legislative council staff, and life members, must be appointed by the governor for terms of four years each, commencing on the first day of September following each presidential election, and shall serve until their respective successors are appointed. The members of the legislative assembly on the commission must be appointed by the legislative council management for a term not to exceed four years as prescribed by the legislative council management, and the member of the legislative council staff must be appointed by the chairman of the legislative council management.

**SECTION 83. AMENDMENT.** Section 54-55-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-55-04. Duties of commissioners and commission.** Each commissioner shall attend the annual meeting of the national conference of commissioners on uniform state laws and shall promote uniformity in state laws on those subjects where uniformity may be deemed desirable and practicable. The commission shall also promote as far as practicable the uniform judicial application and construction of all uniform state laws. During the interim between legislative sessions, the commission may submit its recommendations for enactment of uniform and model laws to the legislative council management for its review and recommendation. Commissioners shall provide such assistance to the legislative council management as the legislative council management requests with respect to its review of uniform and model laws. During each biennial legislative session, and at any other time as the commission may deem proper, the commission shall report to the legislative assembly an account of its transactions and its advice and recommendations for legislation. The report must include the recommendations of the legislative council management with respect to uniform and model laws recommended by the commission.

**SECTION 84. AMENDMENT.** Section 54-58-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-58-03. Tribal-state gaming compact - Creation, renewals, and amendments.** The governor or the governor's designee may represent the state in any gaming negotiation in which the state is required to participate pursuant to 25 U.S.C. 2701 et seq. by any federally recognized Indian tribe and, on behalf of the state, may execute a gaming compact between the state and a federally recognized Indian tribe, subject to the following:

1. If the legislative assembly is not in session at the time gaming negotiations are being conducted, the chairman and vice chairman of the legislative ~~council~~ management or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative ~~council~~ management on the status of the negotiations.
2. If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.
3. The compact may authorize an Indian tribe to conduct gaming that is permitted in the state for any purpose by any person, organization, or entity.
4. For the purposes of this chapter, the term "gaming that is permitted in the state for any purpose by any person, organization, or entity" includes any game of chance that any Indian tribe was permitted to conduct under a tribal-state gaming compact that was in effect on August 1, 1997.
5. The compact may not authorize gaming to be conducted by an Indian tribe at any off-reservation location not permitted under a tribal-state gaming compact in effect on August 1, 1997, except that in the case of the tribal-state gaming compact between the Turtle Mountain Band of Chippewa and the state, gaming may be conducted on land within Rolette County held in trust for the Band by the United States government which was in trust as of the effective date of the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].
6. The compact may not obligate the state to appropriate state funds; provided, however, the state may perform services for reimbursement.
7. The negotiations between the tribe and the state must address the possibility of a mutual effort of the parties to address the issue of compulsive gambling.
8. If the legislative assembly is not in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative ~~council~~ management at least twenty-one days before the compact is signed.
9. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative assembly at least twenty-one days before the compact is signed.

10. Before execution of any proposed tribal-state gaming compact or amendment thereto, the governor shall conduct one public hearing on the proposed compact or amendment.

**SECTION 85. AMENDMENT.** Section 54-59-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-07. State information technology advisory committee.** The state information technology advisory committee consists of the chief information officer; the commissioner of higher education or the commissioner's designee; the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's designee; two members of the legislative assembly appointed by the legislative ~~council~~ management; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor. The appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. Additional members may be asked to participate at the request of the chairman. The department shall provide staff services to the committee. The members of the committee representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning and budgeting, services of the information technology department, and statewide information technology initiatives and policy and shall review reports on major information technology projects as required by this chapter and policies, standards, and guidelines developed by the department. The chief information officer shall submit recommendations of the committee regarding information technology issues to the information technology committee for its consideration.

<sup>196</sup> **SECTION 86. AMENDMENT.** Section 54-59-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-11. Information technology plans.** Each executive branch state agency or institution, excluding the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to acceptance by the department. The plan must be submitted to the department by July fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include an asset management plan relating to the inventory of information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide

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<sup>196</sup> Section 54-59-11 was also amended by section 3 of Senate Bill No. 2142, chapter 517.

policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by July fifteenth of each even-numbered year. Each entity required to file a plan shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments. The statewide information technology plan must contain:

1. A list of major projects started, ongoing, and completed during the biennium, including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. Information regarding evaluations of cost-benefit analyses for completed projects.
3. Information regarding the information technology plans, including the department's plan review process, the number of plans reviewed, and the number of plans accepted.
4. A description of the benefits to the state resulting from its investment in information technology.

**SECTION 87. AMENDMENT.** Section 54-59-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-12. Coordination of activities - Reports.** The department shall cooperate with each state entity providing access to any computer data base or electronically filed or stored information under subsection 4 of section 44-04-18 to assist in providing economical, efficient, and compatible access. The chief information officer shall conduct conferences and meetings with political subdivisions to review and coordinate information technology. The chief information officer and the commissioner of the board of higher education shall meet at least twice each year to plan and coordinate their information technology. The chief information officer and commissioner shall consider areas in which joint or coordinated information technology may result in more efficient and effective state government operations. Upon request, the chief information officer shall report to the legislative ~~council or its designated committee~~ management regarding the coordination of services with political subdivisions, and the chief information officer and commissioner shall report to the legislative ~~council or its designated committee~~ management regarding their findings and recommendations.

**SECTION 88. AMENDMENT.** Section 54-59-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-23. Information technology projects - Reports.**

1. An executive, legislative, or judicial branch agency, except for institutions under the control of the state board of higher education, shall

report to the state information technology advisory committee according to guidelines developed by the department and reviewed by the state information technology advisory committee regarding the plan for and status of any information technology project that is estimated to cost more than two hundred fifty thousand dollars.

2. During the life of the project, the agency shall notify the state information technology advisory committee if:
  - a. At a project milestone, the amount expended on project costs exceeds the planned budget for that milestone by twenty percent or more; or
  - b. At a project milestone, the project schedule extends beyond the planned schedule to attain that milestone by twenty percent or more.
3. A report under subsection 2 must specify corrective measures being undertaken to address any cost or time of completion issue. If the agency has not taken adequate corrective measures within ninety days after the report, the agency shall submit a report to the legislative ~~council's~~ management's information technology committee regarding the project.
4. Upon completion of the project, the agency shall notify the state information technology advisory committee if:
  - a. The budget for the project exceeded the original budget by twenty percent or more; or
  - b. The final project completion date extended beyond the original project scheduled completion date by twenty percent or more.

<sup>197</sup> **SECTION 89. AMENDMENT.** Subsection 10 of section 54-60-03 of the North Dakota Century Code is amended and reenacted as follows:

10. Shall report between the first and tenth legislative days of each regular legislative session to a standing committee of each house of the legislative assembly as determined by the legislative ~~council~~ management and shall report annually to the foundation:
  - a. On the department's goals and objectives since the last report;
  - b. On the department's goals and objectives for the period until the next report;
  - c. On the department's long-term goals and objectives;
  - d. On the department's activities and measurable results occurring since the last report; and

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<sup>197</sup> Section 54-60-03 was also amended by section 10 of Senate Bill No. 2110, chapter 480.

- e. On commerce benchmarks, including the average annual wage in the state, the gross state product exclusive of agriculture, and the number of primary sector jobs in the state;

<sup>198</sup> **SECTION 90. AMENDMENT.** Section 54-60-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-11. Target industries - Report to legislative council.** The commissioner shall identify target industries on which the commissioner shall focus economic development efforts. The commissioner shall designate one of these target industries as a special focus target industry. In identifying and updating target industries, the commissioner shall solicit the advice of the foundation and the North Dakota university system. The commissioner may contract for the services of a third party in identifying target industries. The commissioner shall report biennially to the legislative ~~council~~ management. This report must include information regarding the process used and factors considered in identifying and updating the target industries, the specific tactics the department has used to specifically address the needs of the target industries, the unique tactics and the specific incentives the department has used to support the growth of the special focus target industry, and any recommended legislative changes necessary to better focus economic development services on these industries.

**SECTION 91. AMENDMENT.** Section 54-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-62-03. Advisory commission.** The advisory commission on faith-based and community initiatives is composed of seven members to include the following: the executive director of the department of human services or the director's designee; the director of the department of corrections and rehabilitation or the director's designee; two members of the legislative assembly, one of whom must be selected by the members of the legislative ~~council~~ management representing the majority faction and one of whom must be selected by the members of the legislative ~~council~~ management representing the minority faction; and three public members appointed by the governor, one of whom must represent a minority population. The term of office for the public members is three years. Of the first public members appointed, one must be appointed for a term of one year, one must be appointed for a term of two years, and one must be appointed for a term of three years. No public member may be appointed to more than two consecutive terms. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the advisory commission each year. The advisory commission shall advise the director of the office of faith-based and community initiatives in the establishment of policy regarding matters affecting the faith-based and community organizations, including making recommendations concerning the future of existing state programs and initiatives. The advisory commission on faith-based and community initiatives shall report periodically to the governor and provide the governor with information and recommendations for the governor's consideration. The members of the advisory commission are entitled to mileage and expenses as provided by law for state officers and employees.

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<sup>198</sup> Section 54-60-11 was also repealed by section 16 of Senate Bill No. 2110, chapter 480.

<sup>199</sup> **SECTION 92. AMENDMENT.** Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-12. Emergency services communications coordinating committee - Membership - Duties.**

1. The governing body of a city or county, which adopted a fee on assessed communications services under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the emergency services communications coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the adjutant general to represent the division of state radio.
2. The committee shall:
  - a. Recommend to the legislative ~~council~~ management changes to the operating standards for emergency services communications, including training or certification standards for dispatchers;
  - b. Develop guidelines regarding the allowable uses of the fee revenue collected under this chapter;
  - c. Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed under this chapter, analyze the reports with respect to the guidelines, file its report with the legislative council by November first of each even-numbered year regarding the use of the fee revenue, and recommend to the legislative assembly the appropriate maximum fee allowed by section 57-40.6-02; and
  - d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative ~~council~~ management.
3. The committee may initiate and administer statewide agreements among the governing bodies of the local governmental units with jurisdiction over an emergency 911 telephone system to coordinate the procurement of equipment and services, fund the research, administration, and activities of the committee, and contract for the necessary staff support for committee activities.

**SECTION 93. AMENDMENT.** Section 61-24-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-04. Compensation of directors.** Each member of the board of directors of the district is entitled to receive as compensation from the district an amount determined by the board of directors not to exceed the amount provided for members of the legislative ~~council~~ management under section 54-35-10 per day and

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<sup>199</sup> Section 57-40.6-12 was also amended by section 1 of House Bill No. 1135, chapter 570.

must be reimbursed for the member's expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the board or otherwise engaged in the official business of the district.

<sup>200</sup> **SECTION 94. AMENDMENT.** Section 61-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-04. Board of directors - Officers - Meetings - Compensation.** The authority must be governed by a board of directors who must be chosen in accordance with this chapter. One director must be elected from each county within the authority, and two directors must be elected in the city of Dickinson. The director from Stark County may not be a resident of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative council management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

<sup>201</sup> **SECTION 95. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.** Biennially, the director shall request the state auditor to select a firm with extensive expertise in workforce safety and insurance practices and standards to complete a performance evaluation of the functions and operations of the organization during that biennium. This may not be construed to require the firm to be a certified public accounting firm. As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate departments of the organization to determine whether the organization is providing quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and a representative of the firm shall present the evaluation report and any action taken to the legislative council's management's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation. The director shall provide a copy of the performance evaluation report to the state auditor. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section.

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<sup>200</sup> Section 61-24.5-04 was also amended by section 1 of House Bill No. 1278, chapter 601.

<sup>201</sup> Section 65-02-30 was also amended by section 2 of House Bill No. 1037, chapter 616.

Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

**SECTION 96. AMENDMENT.** Section 65-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-06.2-09. Safety and performance audit.** The organization shall perform a safety audit of the roughrider industries work programs covered under this chapter and a performance audit of the program of modified workers' compensation coverage. The organization shall submit a report with recommendations based on the safety and performance audit to ~~an interim committee designated by the~~ legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

<sup>202</sup> **SECTION 97.** The legislative council may replace "chairman of the legislative council" or "legislative council chairman" with "chairman of the legislative management" in North Dakota Century Code sections 4-05.1-16, 4-35-30, 14-09-09.7, 15-10.2-02, 15-52-03, 15.1-27-41, 16.1-13-10, 20.1-16-02, 24-02-37.2, 27-05.2-09, 44-02-02, 53-12.1-04, 54-03-20, 54-06-25, 54-35-20, 54-35-24, 54-61-01, and 57-39.4-31 and in any other provisions of the code.

<sup>203</sup> **SECTION 98.** The legislative council may replace "budget section of the legislative council" or "legislative council's budget section" with "budget section of the legislative management" in North Dakota Century Code sections 15-03-04, 15-10-12.1, 15-10-12.3, 15-69-02, 15-69-05, 17-02-01, 20.1-02-05.1, 25-04-02.2,

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<sup>202</sup> Section 14-09-09.7 was also amended by section 2 of House Bill No. 1329, chapter 148; section 15-52-03 was also amended by section 1 of Senate Bill No. 2081, chapter 166; section 15.1-27-41 was also amended by section 40 of House Bill No. 1400, chapter 175, and was repealed by section 65 of House Bill No. 1400, chapter 175; section 53-12.1-04 was also amended by section 8 of House Bill No. 1003, chapter 3; section 54-03-20 was also amended by section 40 of House Bill No. 1436, chapter 482, section 9 of Senate Bill No. 2001, chapter 29, section 10 of Senate Bill No. 2001, chapter 29, section 2 of Senate Bill No. 2064, chapter 386, section 3 of Senate Bill No. 2064, chapter 386, section 4 of Senate Bill No. 2064, chapter 386, section 5 of Senate Bill No. 2064, chapter 386, and section 6 of Senate Bill No. 2064, chapter 386; section 54-06-25 was also amended by section 46 of House Bill No. 1436, chapter 482; section 54-35-24 was also amended by section 1 of Senate Bill No. 2029, chapter 504; section 54-61-01 was also amended by section 1 of House Bill No. 1146, chapter 520.

<sup>203</sup> Section 15-03-04 was also amended by section 5 of Senate Bill No. 2085, chapter 153; section 15-69-02 was also amended by section 31 of Senate Bill No. 2018, chapter 46; section 15-69-05 was also amended by section 33 of Senate Bill No. 2018, chapter 46; section 20.1-02-05.1 was also amended by section 2 of House Bill No. 1017, chapter 17; section 40-63-07 was also amended by section 8 of House Bill No. 1324, chapter 545, and section 2 of House Bill No. 1428, chapter 354; section 54-44-04 was also amended by section 1 of Senate Bill No. 2425, chapter 506; section 54-59-05 was also amended by section 1 of Senate Bill No. 2142, chapter 517; section 57-38-01.29 was also amended by section 22 of House Bill No. 1324, chapter 545, and section 1 of House Bill No. 1448, chapter 548; section 57-38-01.30 was also amended by section 23 of House Bill No. 1324, chapter 545.

40-23-22.1, 40-63-07, 47-30.1-24.1, 48-01.2-25, 50-06-05.1, 54-14-03.1, 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-09, 54-23.3-09, 54-27-22, 54-27-23, 54-27.2-03, 54-44-04, 54-44-16, 54-44.1-13.1, 54-59-05, 57-38-01.29, 57-38-01.30, 65-04-03.1, and 65-08.1-02 and in any other provisions of the code.

**SECTION 99. REPEAL.** Section 49-21-22.2 of the North Dakota Century Code is repealed.

Approved May 1, 2009  
Filed May 4, 2009

**CHAPTER 483****HOUSE BILL NO. 1280**  
(Representatives Klemm, DeKrey, Wald)  
(Senators Fischer, Hogue)

AN ACT to require a legislative council study of application by administrative agencies of standards from other than state or federal law which have not been adopted as administrative rules.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study application by administrative agencies of standards from other than state or federal law which have not been adopted as administrative rules. The legislative council shall obtain information from each agency with administrative rulemaking authority regarding any standards applied by the agency to the regulated community which have not been adopted as administrative rules and the reason why the agency has not used its rulemaking authority to adopt the standards as administrative rules and the reason why the agency has not used its agency bill introduction privilege for legislative consideration of the standards. For purposes of this study, "standards" means a body of regulatory provisions developed by an association, commission, or other organization which do not have the force and effect of law in this state or in federal law or regulations. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 484****HOUSE BILL NO. 1309**

(Representatives Koppelman, Delmore, Ruby)  
(Senators Krebsbach, Nelson, Wardner)

AN ACT to provide for a legislative council study of the Interstate Compact on Educational Opportunity for Military Children.

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

**SECTION 1. INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN - STUDY.** During the 2009-10 interim, the legislative council shall consider studying the Interstate Compact on Educational Opportunity for Military Children, as well as its administration, enforcement, cost, and its impact on North Dakota laws, school districts, schools, and children of both military and civilian families, with a view to determining whether North Dakota should become a participating member of the compact. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 16, 2009  
Filed April 17, 2009

**CHAPTER 485****HOUSE BILL NO. 1338**  
(Representative Glassheim)

AN ACT to provide for a legislative council study of solid waste management, with an emphasis on the siting and zoning of landfills on a statewide or regional level while allowing adequate protection for political subdivisions and property owners.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY OF SOLID WASTE MANAGEMENT.** During the 2009-10 interim, the legislative council shall study solid waste management, with an emphasis on the siting and zoning of landfills on a statewide or regional level while allowing adequate protection for political subdivisions and property owners in the siting and zoning process. The study also may include the incorporation of information dealing with new solid waste sciences that affect the overall issue of siting, the reduction of landfill waste in North Dakota through the encouragement and coordination of public and private recycling programs, and the potential for development of methane processing from landfills for power generation. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 486****HOUSE BILL NO. 1341**

(Representatives Glassheim, Grande, Klein)  
(Senator Wardner)

AN ACT to provide for a legislative council study of a state employee tuition reimbursement pool program.

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

**SECTION 1. STATE EMPLOYEE TUITION REIMBURSEMENT POOL - LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of an appropriation to the office of management and budget for a state employee tuition reimbursement pool program. The study must address the amount to be allocated to the pool and the agencies that would be authorized to reimburse state employees for tuition costs of eligible and approved education programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 487****HOUSE BILL NO. 1391**

(Representatives Kasper, Dosch, Headland, Ruby)  
(Senator Klein)

AN ACT to provide for a legislative council study.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - HEALTH INSURANCE NEEDS - REPORT.** During the 2009-10 interim, the legislative council shall conduct a comprehensive study of unmet health care needs in the state. The study must include an assessment of the needs of underinsured and uninsured individuals and families. In addition to considering the federal health care initiatives, the study must include consultation with the state department of health, the insurance commissioner, and the department of human services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 488****HOUSE BILL NO. 1403**

(Representatives Kasper, Brandenburg, Thoreson)  
(Senators Freborg, Olafson)

AN ACT to provide for a legislative council study of the capitol complex facility needs.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - STATE CAPITOL GROUNDS FACILITY NEEDS.** During the 2009-10 interim, the legislative council shall study the utilization of all facilities on the state capitol grounds, including an evaluation of facility needs by state agencies and a review of the capitol complex master plan. The study must include an evaluation of the short-term and long-term viability of facilities located on the capitol grounds, including the governor's residence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 489****HOUSE BILL NO. 1425**

(Representatives Bellew, Damschen, Kreidt, Porter, Weisz, Wieland)

AN ACT to provide for a legislative council study of the responsibility for the funding of nonfederal foster care and subsidized adoption costs.

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

**SECTION 1. NONFEDERAL FOSTER CARE AND SUBSIDIZED ADOPTION COSTS - LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of transferring from the county to the state the responsibility for the funding of nonfederal foster care and subsidized adoption costs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 30, 2009

Filed May 4, 2009

**CHAPTER 490****HOUSE BILL NO. 1497**

(Representative Nathe)  
(Senator Cook)

AN ACT to provide for a legislative council study of the feasibility and desirability of transferring from the county to the state the responsibility for the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT LEGAL COUNSEL COSTS.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of transferring from the county to the state the responsibility for the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals under chapter 25-03.3. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 491****HOUSE BILL NO. 1545**  
(Representatives Ekstrom, Clark, Vig)  
(Senators Anderson, Schneider)

AN ACT to provide for a legislative council study relating to the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - LOW-PROFIT LIMITED LIABILITY COMPANIES.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 492****HOUSE BILL NO. 1562**

(Representatives Schneider, R. Kelsch, L. Meier)  
(Senators Holmberg, Mathern)

AN ACT to provide for a legislative council study of an administrative leave program for state employees to attend certain hearings or meetings.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE COUNCIL STUDY - ADMINISTRATIVE LEAVE.**

The legislative council shall consider studying, during the 2009-10 interim, the feasibility and desirability of an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 493****HOUSE BILL NO. 1573**

(Representatives Hofstad, D. Johnson, Potter, Weisz)  
(Senators J. Lee, Oehlke)

AN ACT to provide for a legislative council study of voucher use and provider choice for clients in human services and other programs and for funding of human services and other state programs.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - VOUCHER USE AND PROVIDER CHOICE.** During the 2009-10 interim, the legislative council shall consider conducting a comprehensive study of voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services. The study must explore the extent to which vouchers are currently used in federal and state human service programs and other programs, how voucher systems are implemented, and the advantages and challenges posed by the use of vouchers as a mechanism for expanding service options and maximizing client choices. The study also must include a comprehensive review of funding for human services and other state programs, focusing on the feasibility of improving access to care and providers for clients through the use of a voucher system, including programs related to mental health services, addiction treatment, counseling services, and transition services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 494****HOUSE BILL NO. 1577**

(Representatives Keiser, Carlson, Boucher, Kasper, Monson, Onstad)  
(Approved by the Delayed Bills Committee)

AN ACT to provide for a legislative council study of factors impacting the cost of health insurance and health insurance company reserves.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - HEALTH INSURANCE COST.**

1. During the 2009-10 interim, the legislative council shall consider studying:
  - a. The factors impacting the cost of health insurance. The factors considered in the study must include:
    - (1) Minimum loss ratio;
    - (2) Three tier rating bands;
    - (3) The effect of the federal Employee Retirement Income Security Act, Medicare, Medicaid, and the state children's health insurance program on individual and small group pricing;
    - (4) Options for self-funding, fully insured funding, and combinations of these two methods of funding;
    - (5) Prepaid coverage versus risk coverage;
    - (6) Corporate structure of health insurance companies;
    - (7) Health insurance company subsidiaries;
    - (8) Rate, form, and reserve approval requirements;
    - (9) Statutory barriers to competition and lower costs;
    - (10) The role of health promotion versus risk coverage;
    - (11) Transparency requirements based on tax incentive benefits;
    - (12) Plan design or coverage options;
    - (13) Health service mandates;
    - (14) Uninsured and underinsured North Dakotans;
    - (15) Proposed federal changes in health care coverage;

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- (16) The business organization and tax status of health insurance companies and the impact this has on premium rates and reserves; and
  - (17) Other health insurance cost and competition factors.
- b. The impact of health insurance company board member compensation and employee salaries, benefits, and severance packages on health insurance rates and health insurance company reserves.
2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 495****SENATE BILL NO. 2370**

(Senators Fischer, Mathern, Hogue, Wardner)  
(Representatives Conrad, Wieland)

AN ACT to provide for a legislative council study of the feasibility and desirability of transferring from the county to the state the responsibility for the cost of expert examinations and the cost and responsibility for providing legal counsel in mental health commitment cases.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - MENTAL HEALTH COMMITMENT EXAMINATION AND LEGAL COUNSEL COSTS.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of transferring from the county to the state the responsibility for the cost of expert examinations and the cost and responsibility for providing legal counsel in mental health commitment cases. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 9, 2009  
Filed April 13, 2009

**CHAPTER 496****SENATE BILL NO. 2390**  
(Senators Schneider, Grindberg)  
(Representatives Glassheim, Thoreson)

AN ACT to provide for a legislative council study of the establishment and development of certified technology parks.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - CERTIFIED TECHNOLOGY PARKS.** During the 2009-10 interim, the legislative council shall consider studying the establishment and development of certified technology parks. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 497****SENATE BILL NO. 2401**

(Senators O'Connell, Olafson)  
(Representatives Hunskor, Klein)

AN ACT to provide for a legislative council study relating to requirements for plans and specifications and bids for public improvements.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - PUBLIC IMPROVEMENTS.**

The legislative council shall study, during the 2009-10 interim, public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Approved April 30, 2009  
Filed May 1, 2009

**CHAPTER 498****SENATE BILL NO. 2417**  
(Senators Fiebiger, Potter)

AN ACT to provide for a legislative council study relating to the state facilitating the reduction of landfill waste and the potential for development of methane processing.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - REDUCTION OF LANDFILL WASTE AND DEVELOPMENT OF METHANE PROCESSING.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of the state facilitating the reduction of landfill waste in North Dakota through encouragement and coordination of public and private recycling programs and investigate the potential for development of methane processing from landfills for power generation. The legislative council shall report its findings and recommendations, and any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 499****SENATE BILL NO. 2420**

(Senators Warner, Erbele, Mathern)  
(Representatives Ekstrom, Nelson)

AN ACT to provide for legislative council studies relating to child support determinations of income and support obligations and the establishment of a consumers of family services program.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2009-10 interim, child support determination of income and support obligations, the feasibility and desirability of the establishment of an ombudsman program, and coordination of services and resources for parents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 2. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2009-10 interim, the establishment of an ombudsman program for consumers of child and family services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 500****SENATE BILL NO. 2422**  
(Senators Krauter, Kilzer, Robinson)  
(Representatives L. Meier, Monson, Rust)

AN ACT relating to a legislative council study of purchasing and procurement.

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

**SECTION 1. PURCHASE AND PROCUREMENT - LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying provisions of the North Dakota Century Code governing the purchase and procurement of goods and services by political subdivisions. The study should address the use of cooperative arrangements for purchasing and procurement in general and specifically for group insurance, employee benefits, and the repair and improvement of facilities. The study also should address the participation of nongovernmental entities in cooperative arrangements for the purchase and procurement of goods and services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 501****HOUSE BILL NO. 1487**

(Representatives Carlson, Boucher)  
(Senators Stenehjem, O'Connell)

AN ACT relating to the receipt of federal economic stimulus or fiscal relief funding.

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

**SECTION 1. FEDERAL FISCAL STIMULUS FUNDING - LEGISLATIVE ACTION - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL.** Any federal funds made available to this state under the federal American Recovery and Reinvestment Act of 2009 may be accepted but may be spent only pursuant to appropriation authority provided by the legislative assembly or the approval of the emergency commission and budget section under provisions of chapter 54-16, for the period beginning with the effective date of this Act and ending June 30, 2011. The emergency commission and budget section may approve only the expenditure of federal American Recovery and Reinvestment Act of 2009 competitive grant awards and other funds that the legislative assembly has not indicated an intent to reject.

Approved April 28, 2009  
Filed April 29, 2009

**CHAPTER 502****SENATE BILL NO. 2336**  
(Senators Fischer, Erbele)  
(Representatives Hawken, S. Kelsh)

AN ACT to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to the creation of a legislative overview committee for water-related topics; and to provide an expiration date.

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

<sup>204</sup> **SECTION 1. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.7. Garrison diversion Water-related topics overview committee - Duties.** The legislative council is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics, during each interim, shall appoint a water-related topics overview committee in the same manner as the council appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters and for any necessary discussions with adjacent states on water-related topics. The committee consists of nine members and the legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

**SECTION 2. EXPIRATION DATE.** This Act is effective through November 30, 2013, and after that date is ineffective.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>204</sup> Section 54-35-02.7 was also amended by section 56 of House Bill No. 1436, chapter 482.

**CHAPTER 503****HOUSE BILL NO. 1060**

(Legislative Council)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact section 54-35-23 of the North Dakota Century Code, relating to extension of the committee on tribal and state relations.

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

<sup>205</sup> **SECTION 1. AMENDMENT.** Section 54-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-23. (Effective through July 31, ~~2009~~ 2011) Committee on tribal and state relations - Membership - Duties.**

1. The committee on tribal and state relations is composed of seven members as follows:
  - a. The chairman of the legislative council or the chairman's designee;
  - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
  - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.
2. The chairman of the legislative council, or the chairman's designee, shall serve as chairman of the committee.
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
4. The committee shall conduct joint meetings with the native American tribal citizens' task force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings

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<sup>205</sup> Section 54-35-23 was also amended by section 74 of House Bill No. 1436, chapter 482.

and recommendations, together with any legislation required to implement those recommendations, to the legislative council.

5. The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
6. a. The native American tribal citizens' task force is composed of six members as follows:
  - (1) The executive director of the Indian affairs commission, or the executive director's designee;
  - (2) The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
  - (3) The chairman of the Spirit Lake Tribe, or the chairman's designee;
  - (4) The chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the chairman's designee;
  - (5) The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
  - (6) The chairman of the Sisseton-Wahpeton ~~Sioux Tribe~~ Oyate of the Lake Traverse Reservation, or the chairman's designee.
- b. If the executive director of the Indian affairs commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian affairs commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 504

### SENATE BILL NO. 2029

(Legislative Council)  
(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact section 54-35-24 of the North Dakota Century Code, relating to the expiration date of the commission on alternatives to incarceration; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>206</sup> **SECTION 1. AMENDMENT.** Section 54-35-24 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-35-24. (Effective through ~~June 30~~ August 1, 2009 2013) Commission on alternatives to incarceration.**

1. The commission on alternatives to incarceration is composed of:
  - a. Three members appointed by the governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
  - b. The attorney general or the attorney general's designee;
  - c. Two members appointed by the chief justice of the supreme court;
  - d. The director of the department of corrections and rehabilitation;
  - e. The director of the department of human services;
  - f. Two local law enforcement officers appointed by the attorney general;
  - g. One state's attorney appointed by the North Dakota state's attorney's association;
  - h. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives;
  - i. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one

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<sup>206</sup> Section 54-35-24 was also amended by section 97 of House Bill No. 1436, chapter 482.

of whom must be selected by the leader representing the minority faction of the senate; and

- j. One representative of the North Dakota association of counties appointed by the association of counties.
2. The chairman of the legislative council shall select the chairman and vice chairman of the commission from the legislative members of the commission.
3. The commission shall meet at the times and places as determined by the chairman. The legislative council shall provide staffing for the commission.
4. The commission shall study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. If the commission determines that consultant services are necessary to assist the commission in conducting its assigned studies, the commission may request funding for consultant services from the legislative council and other interested entities. The commission shall provide to the governor information and recommendations for the governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The commission shall report its findings and recommendations together with any legislation required to implement those recommendations to the legislative council.
5. The members of the commission who are not state employees or members of the legislative assembly are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in this subsection, the expenses of appointed members are to be paid by the legislative council. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency. The members of the commission who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at commission meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 505

### HOUSE BILL NO. 1059

(Legislative Council)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact sections 54-36-01 and 54-36-03 of the North Dakota Century Code, relating to the members and the powers and duties of the Indian affairs commission; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-36-01. Commission - Members - Officers - Expenses of members.**

The North Dakota Indian affairs commission consists of the governor, three members appointed by the governor from the state at large, two of whom must be of Indian descent, must be enrolled members of a tribe, and must be current voting residents of the state of ~~North Dakota~~, and the chairperson, or the chairperson's designee, of the Standing Rock Sioux Tribe; the Spirit Lake Tribe; the Three Affiliated Tribes of the Fort Berthold Reservation; the Turtle Mountain Band of Chippewa Indians; and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. The governor is the chairperson of the commission. The commission shall meet quarterly or as otherwise agreed. Members of the commission or the chairperson's designee are entitled to receive mileage and expenses for attending each meeting as are allowed other state officers.

**SECTION 2. AMENDMENT.** Section 54-36-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-36-03. Powers and duties - Continuing appropriation.** The Indian affairs commission ~~shall have the power to~~ may assist and to mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota, especially the five tribal councils, as they the Indian individuals and tribal councils seek to develop their own goals, project plans for achieving those goals, and implement those plans. The commission may accept gifts, grants, donations, and services from any source which are appropriated on a continuing basis for the purposes of the commission. The commission's duties are to:

1. ~~To investigate~~ Investigate any phase of Indian affairs and to assemble and make available the facts needed by tribal, state, and federal agencies to work effectively together.
2. ~~To assist~~ Assist tribal, state, and federal agencies in developing programs whereby Indian citizens may achieve more adequate standards of living.
3. ~~To assist~~ Assist tribal groups in developing increasingly effective institutions of self-government.
4. ~~To work~~ Work for greater understanding and improved relationships between Indians and non-Indians.

5. ~~To seek~~ Seek increased participation by Indian citizens in local and state affairs.
6. ~~To confer~~ Confer with and coordinate officials and agencies of other governmental units and congressional committees with regard to Indian needs and goals.
7. ~~To encourage~~ Encourage and propose agreements and accords between federal, state, and local agencies and the several tribal governments, and, pursuant to chapter 54-40.2, to assist in monitoring and negotiating agreements and accords when ~~asked~~ requested by an affected tribe.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 506****SENATE BILL NO. 2425**

(Senators Heckaman, Holmberg, Krauter, O'Connell, Wardner)  
(Representative Boucher)

AN ACT to create and enact a new subsection to section 54-44-04 of the North Dakota Century Code, relating to requiring the director of the office of management and budget to develop a report for the construction of all facilities occupied by state agencies on the capitol grounds.

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

<sup>207</sup> **SECTION 1.** A new subsection to section 54-44-04 of the North Dakota Century Code is created and enacted as follows:

Shall prepare and submit to the legislative council by October 1, 2010, a report including the location, expenses, and square footage requirements of all facilities occupied by each state agency. The report must include recommendations for relocation of any entity to achieve improvements in service to the public along with optimal efficiencies in usage of space and cost. The report must include recommendations within the master plan for construction of buildings on the capitol grounds.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>207</sup> Section 54-44-04 was also amended by section 98 of House Bill No. 1436, chapter 482.

**CHAPTER 507****SENATE BILL NO. 2131**

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 54-44-04.6 of the North Dakota Century Code, relating to service charges for recycling and disposal of surplus property; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-44-04.6 of the North Dakota Century Code is amended and reenacted as follows:

**54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.**

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. Political subdivisions may provide their surplus property to the office of management and budget for disposition according to subsections 3, 4, and 5.
3. Surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
4. If not disposed of under subsection 3, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars. The office of management and budget may establish a program for the recycling and disposal of surplus property determined to be unsalable and may assess and collect service charges from the department, agency, institution, or political subdivision from which the property was received to cover direct and reasonable costs of this service.
5. All proceeds received from the transfer ~~or~~, sale, recycling, or disposal of surplus property must be deposited with the state treasurer for deposit in the surplus property operating fund. For each piece of property sold for less than three thousand dollars, all proceeds must be retained in the surplus property operating fund unless the office of management and budget determines the sale proceeds are subject to special requirements for distribution. For each piece of property sold for three

thousand dollars or more, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased. At the end of each biennium, the office of management and budget shall transfer all funds in the surplus property operating fund that exceed the amount needed for operating the surplus property function for one year to the general fund.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 508****HOUSE BILL NO. 1460**  
(Representatives Berg, Kaldor)

AN ACT to create a state property and institution alternative use grant program.

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

**SECTION 1. State property and institution alternative use grant program.** State institutions may work with local communities and stakeholders to develop proposed property or institution alternative use plans, including partnerships with private industry and not-for-profit organizations, to be reviewed by the office of management and budget. In accordance with the provisions of the community and institution approved plan, the office of management and budget shall introduce any statutory and constitutional changes necessary to implement the plan and request funding for the grant under this section for consideration by the legislative assembly. Subject to approval of all necessary statutory and constitutional changes and necessary legislative appropriations, the office of management and budget shall provide a grant up to the present value of the total estimated savings to the state for the next ten years resulting from converting the property or institution to an alternative use. The office of management and budget shall consider the estimated cost to the state of continuing to provide the service of the institution or property to state residents when calculating the estimated savings to the state. The office of management and budget shall use the rate of interest earned on state funds deposited at the Bank of North Dakota for calculating the present value of the estimated savings to the state. The grant is to assist the institution and community in the transition to an alternative use.

Approved April 9, 2009  
Filed April 13, 2009

**CHAPTER 509****SENATE BILL NO. 2061**

(Legislative Council)  
(Workforce Committee)

AN ACT to provide for human resource management services to study workforce recruitment and retention and report to the legislative council.

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

**SECTION 1. HUMAN RESOURCE MANAGEMENT SERVICES STUDY -  
WORKFORCE RETENTION - REPORT TO THE LEGISLATIVE COUNCIL.**

1. Human resource management services shall conduct a study to evaluate steps the state could take to recruit and retain state employees in state government employment as those state employees reach retirement. As part of the study, human resource management services shall:
  - a. Select four state agencies with employees who occupy positions in the classified service to determine what actual and perceived barriers exist for retention and to determine what steps the state could take to increase retention of state employees who are retiring or nearing retirement.
  - b. Survey agency heads and employees of the selected state agencies to determine perceived and actual barriers to retaining state employees.
  - c. Consider steps the state could take to retain employees in the employing agency and steps the state could take to retain employees in state government employment in a different agency.
  - d. Consider steps other public employers have taken to retain their workforce as members of their workforce near retirement.
2. State agencies shall cooperate with human resource management services in conducting this study, including the North Dakota public employees retirement board and alternative retirement systems.
3. Before July 1, 2010, the director of human resource management services shall report to the legislative council on the outcome of the study, including specific recommendations of legislative and nonlegislative actions the state could take to address the issue of state employee workforce retention.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 510****HOUSE BILL NO. 1113**

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 54-44.3-12.2 of the North Dakota Century Code, relating to state employee complaint appeals.

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

**SECTION 1. AMENDMENT.** Section 54-44.3-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals.** It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. ~~To ensure this the state desires by requiring affected agencies to adopt grievance procedures and through the creation of a statewide appeals mechanism with primary jurisdiction to entertain and resolve classified employee appeals.~~ It is the policy of this state to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service and probationary employees in the classified service which are related to discrimination or reprisal. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative ~~hearing officer~~ law judge for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the administrative ~~hearing officer~~ law judge must be filed according to chapter 28-32, including proper service upon the division, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 28-32 unless an employee of one of those two agencies is involved in the grievance.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 511

### HOUSE BILL NO. 1067

(Representatives Wald, Skarphol, Grande)  
(Senators O'Connell, Wardner, Triplett)

AN ACT to amend and reenact section 54-44.3-20 of the North Dakota Century Code, relating to exempting engineers and geologists employed by the director of mineral resources from classified service.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>208</sup> **SECTION 1. AMENDMENT.** Section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-20. Categories of positions in the state service.** All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the state board of higher education.
9. Members and employees of occupational and professional boards.

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<sup>208</sup> Section 54-44.3-20 was also amended by section 1 of House Bill No. 1464, chapter 611.

10. Officers and employees of the North Dakota mill and elevator association.
11. The director of the committee on employment of people with disabilities of the department of human services.
12. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.
13. Licensed teachers engaged in teaching at the North Dakota youth correctional center, North Dakota vision services - school for the blind, and the school for the deaf.
14. Officers and employees of workforce safety and insurance.
15. Officers and employees of the department of commerce.
16. Attorneys employed by the insurance commissioner.
17. Engineers and geologists employed by the director of mineral resources.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 512

### HOUSE BILL NO. 1575

(Representatives Grande, Wald)  
(Senators Krebsbach, Lyson)

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to participation by peace officers employed by the bureau of criminal investigation in the defined benefit retirement plan; to amend and reenact subsection 11 of section 54-52-01, subsection 3 of section 54-52-05, and subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to participation by peace officers employed by the bureau of criminal investigation in the defined benefit retirement plan; and to provide an appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 11 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

<sup>209</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, ~~and 54-52-06.3,~~ and section 3 of this Act or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are

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<sup>209</sup> Section 54-52-05 was also amended by section 8 of Senate Bill No. 2153, chapter 514.

paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

**SECTION 3.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

**Contribution by peace officers employed by the bureau of criminal investigation - Employer contribution.** Each peace officer employed by the bureau of criminal investigation who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's assessment.

<sup>210</sup> **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Retirement dates are defined as follows:
  - a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
    - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
  - b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in

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<sup>210</sup> Section 54-52-17 was also amended by section 9 of Senate Bill No. 2153, chapter 514, and section 10 of Senate Bill No. 2153, chapter 514.

which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.

- c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:
  - (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement; or
  - (2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:
  - (1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer immediately preceding retirement; or
  - (2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- e. f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- f. g. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible

employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:

- (1) Became disabled during the period of eligible employment; and
- (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$185,946, or so much of the sum as may be necessary, and \$15,164 in other funds, or so much of the sum as may be necessary, to the attorney general for the purpose of implementing this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 513

### SENATE BILL NO. 2154

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact sections 54-52-02.9 and 54-52-27, subsection 1 of section 54-52.1-03.2, and subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code, relating to participation in the public employees retirement system, purchase of sick leave credit, and the retiree health benefits fund.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.9. Participation by temporary employees.** A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2 ~~one percent times the temporary employee's present monthly salary~~. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 2. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-27. Purchase of sick leave credit.** A member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the retirement program of the member, plus ~~one percent~~ the required contribution for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

**SECTION 3. AMENDMENT.** Subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one and fourteen hundredths percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction shall contribute monthly to the retiree health benefits fund an amount equal to three and ~~one-tenth~~ twenty-four hundredths percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one and fourteen hundredths percent of the monthly salary or wages of those nonteaching employee members. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal to two and ~~eighty-five~~ ninety-nine hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 54-52-02.14 and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one and fourteen hundredths percent of the monthly salary or wages of those employee members. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

**SECTION 4. AMENDMENT.** Subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to ~~four five dollars and fifty cents~~ multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system, the public employees retirement system, the retirement program established by job service North Dakota under section 52-11-01, or the judges' retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, or a former participating member of the defined contribution retirement plan who is receiving a periodic distribution and would not meet the normal retirement provisions of the public employees retirement system, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment prior to attaining the age of sixty-four.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 514****SENATE BILL NO. 2153**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

AN ACT to create and enact a new subsection to section 39-03.1-09, a new subdivision to subsection 9 of section 39-03.1-11, a new subsection to section 54-52-05, and a new subdivision to subsection 9 of section 54-52-17 of the North Dakota Century Code, relating to payment of employee contributions and retirement benefits under the highway patrolmen's retirement plan and the public employees retirement system; to amend and reenact subsection 1 of section 21-10-01, section 39-03.1-08.2, subdivision a of subsection 1 of section 39-03.1-10.1, section 39-03.1-11.2, subsection 4 of section 54-52-03, subsections 6 and 7 of section 54-52-17, section 54-52-28, subsection 7 of section 54-52.1-03, and section 54-52.1-03.4 of the North Dakota Century Code, relating to membership of the state investment board, purchase of service credit, member refunds, Internal Revenue Code compliance, and board elections under the highway patrolmen's retirement plan and the public employees retirement system, and participation and employer payments under the uniform group insurance program; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 21-10-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of workforce safety and insurance, the insurance commissioner, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, ~~and three~~ two of the elected members of the public employees retirement system board as selected by that board, ~~and one member of the public employees retirement system board as selected by that board.~~ The director of workforce safety and insurance may appoint a designee, subject to approval by the workforce safety and insurance board of directors, to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the director of workforce safety and insurance or the director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

**SECTION 2. AMENDMENT.** Section 39-03.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-08.2. Purchase of additional service credit.**

1. The fund may accept rollovers from other eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
  2. ~~Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.~~
  3. ~~A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.~~
  4. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).
3. A contributor may elect to purchase credit for years of service and prior service for which the contributor is not presently receiving credit. A contributor is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
- a. Except as provided in subsection 3 of section 39-03.1-10.1, up to four years of credit for active employment in the armed forces of the United States.
  - b. Employment as a permanent employee by a public employer either within or outside the state.
  - c. Employment as a permanent employee by the federal government.
4. A contributor may elect to purchase credit for the following absences for which the participating contributor is not receiving service credit:
- a. Employer-approved leave of absence; and
  - b. Months away from work while participating as a seasonal employee.

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a contributor may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a contributor to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a contributor elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

**SECTION 3.** A new subsection to section 39-03.1-09 of the North Dakota Century Code is created and enacted as follows:

For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

**SECTION 4. AMENDMENT.** Subdivision a of subsection 1 of section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or; is automatically payable if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically and the contributor has an account balance of less than one thousand dollars.

**SECTION 5.** A new subdivision to subsection 9 of section 39-03.1-11 of the North Dakota Century Code is created and enacted as follows:

An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

**SECTION 6. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.2. Internal Revenue Code compliance.**

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.
2. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
3. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.
4. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.

**SECTION 7. AMENDMENT.** Subsection 4 of section 54-52-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Three board members must be elected by and from among the active participating members, members of the retirement plan established under chapter 54-52.6, members of the retirement plan established under chapter 39-03.1, and members of the job service North Dakota retirement plan. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members must be elected to a five-year term pursuant to an election called by the board. Notice of board elections must be given to all active participating members. The

time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave.

<sup>211</sup> **SECTION 8.** A new subsection to section 54-52-05 of the North Dakota Century Code is created and enacted as follows:

For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

<sup>212</sup> **SECTION 9. AMENDMENT.** Subsections 6 and 7 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board

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<sup>211</sup> Section 54-52-05 was also amended by section 2 of House Bill No. 1575, chapter 512.

<sup>212</sup> Section 54-52-17 was also amended by section 4 of House Bill No. 1575, chapter 512, and section 10 of Senate Bill No. 2153, chapter 514.

shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:

- a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
    - (1) A lump sum payment of the member's retirement account as of the date of death.
    - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
  - b. The surviving spouse of all other members may select one of the following options:
    - (1) A lump sum payment of the member's retirement account as of the date of death.
    - (2) ~~Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.~~
    - (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
    - (4) (3) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board ~~shall~~ automatically shall refund a member's account balance if the member has completed less than three years of eligible employment, has an account balance of less than one thousand dollars, and was not a supreme or district court judge. If the member was a supreme or district court judge, the board ~~shall~~ automatically shall refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board,

within thirty days after termination, requesting that the member's account balance remain in the fund.

<sup>213</sup> **SECTION 10.** A new subdivision to subsection 9 of section 54-52-17 of the North Dakota Century Code is created and enacted as follows:

An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

**SECTION 11. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-28. Internal Revenue Code compliance.**

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2007~~ 2009, as it applies for governmental plans.
2. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
3. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.
4. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. The reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.

**SECTION 12. AMENDMENT.** Subsection 7 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>213</sup> Section 54-52-17 was also amended by section 4 of House Bill No. 1575, chapter 512, and section 9 of Senate Bill No. 2153, chapter 514.

7. If the participating employee is a teacher faculty member in a state charitable, penal, or educational institution who receives a salary or wages on a nine-month less than a twelve-month basis and has signed a contract to teach for the next ensuing school year, the agency shall make arrangements to include that employee in the insurance program on a twelve-month basis and make the contribution authorized by this section for each month of the twelve-month period.

**SECTION 13. AMENDMENT.** Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.4. Participation by employees of certain political subdivisions and temporary Temporary employees and employees on unpaid leave of absence.** An employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to section 54-52.1-03.4 and is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the board. The board may use risk-adjusted premiums for individual insurance contracts to implement the provisions of this section allowing employees of a county, city, school district, district health unit, or park district to participate in the uniform group insurance program. The county, city, school district, district health unit, or park district employee participating in the uniform group insurance program under this section shall pay monthly to the board the premiums in effect for the coverage being provided. A temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program. A temporary employee employed on or after August 1, 2007, is only eligible to participate in the uniform group insurance program if the employee is employed at least twenty hours per week and at least twenty weeks each year of employment. The temporary employee or the temporary employee's employer shall pay monthly to the board the premiums in effect for the coverage being provided. An employer may pay health or life insurance premiums for a permanent employee on an unpaid leave of absence. A political subdivision, department, board, or agency may make a contribution for coverage under this section.

**SECTION 14. EFFECTIVE DATE.** Sections 2, 5, and 10 of this Act become effective on March 1, 2011.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 515****HOUSE BILL NO. 1173**

(Representatives Klemin, Kretschmar, Griffin)  
(Senators Triplett, Hogue, Fiebiger)

AN ACT to create and enact a new subsection to section 54-52-04 of the North Dakota Century Code, relating to the authority of the public employees retirement system board to create a trust health care savings plan for all supreme and district court judges participating in the public employees retirement system.

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

**SECTION 1.** A new subsection to section 54-52-04 of the North Dakota Century Code is created and enacted as follows:

The board may create and implement an Internal Revenue Code section 115 trust health care savings plan for all supreme and district court judges participating in the public employees retirement system if seventy-five percent of the total active participating supreme and district court judges vote to approve the program. If approved, the contribution level specified in the vote applies to all current and future participating supreme and district court judges and must be paid pursuant to the plan document developed by the board. The contribution level may only be changed by a vote of seventy-five percent of the total active participating supreme and district court judges at that time.

Approved April 16, 2009  
Filed April 17, 2009

## CHAPTER 516

### SENATE BILL NO. 2128

(Agriculture Committee)

(At the request of the Upper Great Plains Transportation Institute)

AN ACT to amend and reenact section 54-53-02 of the North Dakota Century Code, relating to the membership of the advisory transportation council of the upper great plains transportation institute.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-53-02. Advisory transportation council - Composition.** There is established a transportation council that shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council. The council shall elect its own chairman. The council membership consists of one representative from and appointed by the following:

1. The ~~greater~~ North Dakota chamber of commerce.
2. The North Dakota public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The North Dakota grain growers association.
6. The North Dakota ~~state~~ wheat commission.
7. The North Dakota department of commerce.
8. The North Dakota grain dealers association.
9. The North Dakota motor carriers association.
10. The North Dakota aeronautics commission.
11. The North Dakota department of transportation.
12. The North Dakota department of agriculture ~~commissioner~~.
13. The ~~North Dakota association of~~ associated general contractors of North Dakota.
14. The North Dakota railway industry, appointed by the council.
15. The North Dakota primary sector of manufacturing, appointed by the council.

16. The North Dakota association of counties.
17. The North Dakota league of cities.
18. The lignite energy council.
19. A North Dakota member of the dakota transit association.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the ~~executive chairman~~ or director or upon the written request of three or more members of the council.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 517

### SENATE BILL NO. 2142

(Political Subdivisions Committee)

(At the request of the Information Technology Department)

AN ACT to amend and reenact sections 54-59-05, 54-59-08, and 54-59-11 of the North Dakota Century Code, relating to powers and duties of the information technology department, required use of wide area network services, and information technology plans.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>214</sup> **SECTION 1. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-05. Powers and duties of department.** The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the

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<sup>214</sup> Section 54-59-05 was also amended by section 98 of House Bill No. 1436, chapter 482.

department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.

5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency; ~~the state board of higher education, or any institution under the control of the state board of higher education as provided in section 54-35-15.2.~~ The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and two hundred fifty thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.

12. ~~Shall review the information technology management of executive branch agencies or institutions.~~
13. ~~Shall perform all other duties necessary to carry out this chapter.~~
14. 13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003. ~~The department shall file with the state auditor before September 1, 2003, a description of the wide area network service the department provided to each private, charitable, and nonprofit entity receiving services from the department on January 1, 2003.~~
15. 14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
16. 15. Notwithstanding subsection 44 ~~13~~, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

**SECTION 2. AMENDMENT.** Section 54-59-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-08. Required use of wide area network services.** Each state agency and institution that desires access to wide area network services and each county, city, and school district that desires access to wide area network services to transmit voice, data, or video outside that county, city, or school district shall obtain those services from the department. The chief information officer may exempt from the application of this section a county, city, or school district that demonstrates its current wide area network services are more cost-effective for or more appropriate for the specific needs of that county, city, or school district than wide area network services available from the department. ~~The chief information officer shall exempt from the application of this section a county, city, or school district that is under contract to receive wide area network services from an entity other than the department, for the term of that contract, but that political subdivision may not extend or renew that contract beyond July 31, 2001.~~

<sup>215</sup> **SECTION 3. AMENDMENT.** Section 54-59-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-11. Information technology plans.** Each executive branch state agency or institution, excluding the institutions under the control of the board of higher education, unless the chief information officer grants an exemption, shall prepare an participate in the information technology plan, subject to acceptance

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<sup>215</sup> Section 54-59-11 was also amended by section 86 of House Bill No. 1436, chapter 482.

planning process based on guidelines developed by the department. The plan must be submitted to the department by July August fifteenth of each even-numbered year unless the chief information officer grants an extension. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include an asset management plan relating to the inventory of information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by July August fifteenth of each even-numbered year. Each entity required to file a plan shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments. The statewide information technology plan must contain:

1. A list of major projects started, ongoing, and completed during the biennium, including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. Information regarding evaluations of cost-benefit analyses for completed projects.
3. Information regarding the information technology plans, including the department's plan review process, the number of plans reviewed, and the number of plans accepted.
4. A description of the benefits to the state resulting from its investment in information technology.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 518

### SENATE BILL NO. 2041 (Legislative Council) (Information Technology Committee)

AN ACT to amend and reenact section 54-59-21 of the North Dakota Century Code, relating to the criminal justice information sharing board.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 54-59-21 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-59-21. Criminal justice information sharing board - Membership - Duties and powers - Director - Exempt records.**

1. The criminal justice information sharing board consists of ~~the~~
  - a. The chief justice of the supreme court or the chief justice's designee; ~~the~~
  - b. The attorney general or the attorney general's designee; ~~and the~~
  - c. The chief information officer of the state.
  - d. The director of the department of emergency services or the director's designee.
  - e. The director of the department of corrections and rehabilitation or the director's designee.
  - f. The superintendent of the state highway patrol or the superintendent's designee.
  - g. The chief of the bureau of criminal investigation.
  - h. The director of the department of transportation or the director's designee.
  - i. A representative of a city police department, appointed by the governor from a list of two or more nominees from the North Dakota chiefs of police association.
  - j. A representative of a county sheriff's office, appointed by the governor from a list of two or more nominees from the North Dakota sheriffs and deputies association.
  - k. A state's attorney, appointed by the governor from a list of two or more nominees from the North Dakota state's attorneys association.
  - l. One at-large member appointed by the governor.

2. The chief information officer is chairman of the board. Board members who are not permanent full-time state employees are entitled to compensation of seventy-five dollars per day and mileage and expenses as provided by law for state employees to be paid by the information technology department. A state employee who is a board member must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency. Board members who are appointed by the governor under this section serve for a term of three years.
- 2- 3. The information technology department, at the direction of the board, shall maintain a criminal justice data information sharing system to facilitate the exchange of criminal justice information among judicial, law enforcement, and emergency personnel. Only a criminal justice agency, as defined in section 12-60-16.1, and any other person designated by the board may access the system. The system only may be accessed for the purposes set forth by the board. Any law enforcement record in the possession of the department is an exempt record.
- 3- 4. The board may appoint and employ a director who serves at the pleasure of and under the direct supervision of the board. The information technology department shall provide staff and other necessary support to the board. The board or director may acquire support staff and employ personnel who are under the direct supervision of the director and the board.
- 4- 5. The board shall set policy and adopt rules relating to the access to and the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board shall provide operational oversight for criminal justice information sharing activities and shall approve and provide oversight of criminal justice information sharing budgets. The board may appoint ~~an executive committee and an advisory committee that would serve in an advisory capacity to the board~~ such committees as it deems necessary.
- 5- 6. The director may contract with the bureau of criminal investigation for the processing of federal fingerprint identification.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 519****SENATE BILL NO. 2332**

(Senators J. Lee, Robinson)  
(Representatives Kaldor, Weisz)

AN ACT to create and enact two new sections to chapter 6-09 and three new sections to chapter 54-59 of the North Dakota Century Code, relating to Bank of North Dakota loan funds for health information technology, the creation of a health information technology advisory committee and a health information technology office, and to health information exchange grants; to repeal section 23-01-31 of the North Dakota Century Code, relating to the North Dakota health information technology steering committee; to provide an appropriation; to provide for transfers; to provide for a report to the budget section and the legislative council; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

**Health information technology loan fund - Appropriation.**

1. The health information technology loan fund is established in the Bank for the purpose of providing loans to health care providers to purchase and upgrade electronic health record technology, train personnel in its use, improve security of information exchange, and for other purposes as established by the health information technology office, in collaboration with the health information technology advisory committee. This fund is a revolving loan fund. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement according to this section.
2. The Bank shall make loans from this fund to health care providers as approved by the health information technology office director, in collaboration with the health information technology advisory committee, in accordance with the criteria established by the health information technology office director under section 4 of this Act. A loan made under this fund must be repayable over a period that may not exceed ten years.
3. The Bank shall administer the health information technology loan fund. Funds in the loan fund may be used for loans as provided under this section and the costs of administration of the fund. Annually, the Bank may deduct a service fee for administering the revolving loan fund maintained under this section.
4. An application for a loan under this section must be made to the health information technology office. The health information technology office director, in collaboration with the health information technology advisory committee, may approve the application of a qualified applicant that meets the criteria established by the health information technology office

director. The health information technology office shall forward approved applications to the Bank. Upon approval of the application by the Bank, the Bank shall make the loan from the revolving loan fund as provided under this section.

5. The Bank may do all acts necessary to negotiate loans and preserve security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving loan fund under mortgages, contracts, and notes executed to obtain loans under this section. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the Bank may take a subordinate security interest. The Bank may recover from the revolving loan fund amounts actually expended by the Bank for legal fees and to effect a redemption.

**SECTION 2.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

**Health information technology planning loan fund - Appropriation.**

1. The health information technology planning loan fund is established in the Bank for the purpose of providing low-interest loans to health care entities to assist those entities in improving health information technology infrastructure. This fund is a revolving loan fund. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement according to this section.
2. The Bank shall make loans from this fund to health care entities as approved by the health information technology office director, in collaboration with the health information technology advisory committee, in accordance with the criteria established by the health information technology director under section 4 of this Act.
3. The Bank shall administer the health information technology planning loan fund. Funds in the loan fund may be used for loans as provided under this section and the costs of administration of the fund. Annually, the Bank may deduct a service fee for administering the revolving loan fund maintained under this section.
4. An application for a loan under this section must be made to the health information technology office. The health information technology office director, in collaboration with the health information technology advisory committee, may approve the application of a qualified applicant that meets the criteria established by the health information technology office director. The health information technology office shall forward approved applications to the Bank. Upon approval of the application by the Bank, the Bank shall make the loan from the revolving loan fund as provided under this section.
5. The Bank may do all acts necessary to negotiate loans and preserve security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving loan fund under mortgages, contracts, and notes executed to obtain loans under this section. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the

Bank may make a loan subordinate security interest. The Bank may recover from the revolving loan fund amounts actually expended by the Bank for legal fees and to effect a redemption.

**SECTION 3.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Health information technology advisory committee - Duties.**

1. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of human services or the executive director's designee, and individuals appointed by the governor and the state health officer to represent a broad range of public and private health information technology stakeholders.
2. The health information technology advisory committee shall collaborate with and make recommendations to the health information technology office, as provided under sections 1, 2, 4, and 5 of this Act.
3. As requested by the health information technology advisory committee, the department shall provide or arrange for administrative services to assist the health information technology advisory committee.
4. The health information technology advisory committee may employ an executive director who serves at the pleasure of and under the direct supervision of the health information technology advisory committee. The executive director may employ personnel as necessary for the administration of this section.

**SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Health information technology office - Duties - Loan and grant programs.**

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
  - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.

- b. Establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and improving the secure electronic exchange of health information, and for any other purpose under section 1 of this Act.
- c. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 2 of this Act.
- d. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
- e. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions b, c, and d. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision c must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.

**SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Health information technology office - Electronic health information exchange fund.**

1. There is created an electronic health information exchange fund. The fund consists of moneys deposited in the fund from federal or other sources or moneys transferred into the fund as directed by the legislative assembly. The health information technology office shall administer this fund and shall distribute moneys in the fund accordingly. The moneys in the fund must be used to facilitate and expand electronic health information exchange. Moneys in the fund may be used, subject to legislative appropriations, to provide services directly, for grants as provided under this section, and for the costs of administration of the fund.
2. A grant applicant shall submit an application to the health information technology office, which shall determine the applicant's eligibility based upon criteria established by the health information technology office director in collaboration with the health information technology advisory committee.
3. This section does not create an entitlement to any funds available for grants under this section. The health information technology office may award these grants to the extent funds are available and, within the office's discretion, to the extent such applications are approved.

**SECTION 6. REPEAL.** Section 23-01-31 of the North Dakota Century Code is repealed.

**SECTION 7. HEALTH INFORMATION TECHNOLOGY OFFICE AND HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE - REPORT TO LEGISLATIVE COUNCIL AND BUDGET SECTION.** During the 2009-10 interim, the health information technology office and health information technology advisory committee shall provide periodic reports to the legislative council and the budget section on the status of health information technology activities.

**SECTION 8. BANK OF NORTH DAKOTA TRANSFERS.** The industrial commission shall transfer, during the period beginning with the effective date of this Act and ending June 30, 2011, as requested by the health information technology office director, up to \$8,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota to the health information technology loan fund to meet any required match for federal funds or to the electronic health information exchange fund to meet any required match for federal funds or as directed, a portion to both funds to meet any required match for federal funds. The health information technology office director shall request fund transfers from the Bank only as necessary to comply with federal requirements and to meet cash flow needs of the funds.

**SECTION 9. CONTINGENT BANK OF NORTH DAKOTA TRANSFER.** If actual general fund revenues for the period July 1, 2009, through September 30, 2009, exceed estimated general fund revenues for that period by at least \$22,500,000, as determined by the office of management and budget, based on the legislative estimates made at the close of the 2009 legislative session and upon certification by the health information technology office director to the director of the office of management and budget of a demonstrated need for health information technology planning loans, the industrial commission shall transfer, as requested by the health information technology office director, up to \$5,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota to the health information technology planning loan fund, for the biennium beginning July 1, 2009, and ending June 30, 2011. The health information technology office director shall request transfers from the Bank only as necessary to meet cash flow needs of the fund.

**SECTION 10. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the information technology department for the purpose of defraying the costs of the health information technology advisory committee and the health information technology office, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 11. APPROPRIATION.** There is appropriated out of any moneys in the electronic health information exchange fund, not otherwise appropriated, the sum of \$88,000,000, or so much of the sum as may be necessary, including up to \$80,000,000 of federal funds deposited in the fund from the federal American Recovery and Reinvestment Act of 2009 to the information technology department for the purposes established under section 5 of this Act, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 7, 2009

Filed May 19, 2009

**CHAPTER 520****HOUSE BILL NO. 1146**

(Representative DeKrey)  
(Senator Lyson)

AN ACT to amend and reenact subsection 1 of section 54-61-01 and section 54-61-04 of the North Dakota Century Code, relating to the commission on legal counsel for indigents.

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

<sup>216</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 54-61-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The commission on legal counsel for indigents is established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for ~~these indigent~~ individuals determined by the court to be eligible for and in need of those services pursuant to the standards and policies of the commission governing eligibility for such services.

**SECTION 2. AMENDMENT.** Section 54-61-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-61-04. Records, files, and information - Accessibility - Confidentiality.** Any file, record, or information regarding representation of a ~~defendant party~~ under sections 54-61-01 through 54-61-03 which are attorney work-product or otherwise subject to any attorney-client privilege are confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

Approved March 5, 2009  
Filed March 5, 2009

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<sup>216</sup> Section 54-61-01 was also amended by section 97 of House Bill No. 1436, chapter 482.

**CHAPTER 521****SENATE BILL NO. 2129**

(Agriculture Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact a new section to chapter 54-63 of the North Dakota Century Code, relating to definitions; to amend and reenact subsection 5 of section 54-44.4-02, subsection 2 of section 54-60.1-01, and sections 54-63-01 and 54-63-03 of the North Dakota Century Code, relating to the renewable energy program; and to repeal sections 54-17-38 and 54-17-39 of the North Dakota Century Code, relating to the biomass incentive and research program.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements ~~through a contract or other instrument executed~~ by the industrial commission for energy-related programs under chapters 17-05, 54-17.5, 54-17.6, ~~and 54-17.7,~~ and 54-63 and under those statutes in title 38 authorizing the industrial commission to perform well and hole pluggings, reclamation work, equipment removal, leak prevention, and similar work.

<sup>217</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more committed within a year. Unless specifically provided otherwise, the term does not include:
  - a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
  - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.

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<sup>217</sup> Section 54-60.1-01 was also amended by section 4 of House Bill No. 1202, chapter 109.

- c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
- d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
- e. Assistance to provide job-readiness and training services if the sole purpose of the assistance is to provide those services.
- f. Assistance for housing.
- g. Assistance for pollution control or abatement.
- h. Assistance for energy conservation.
- i. Tax reductions resulting from conformity with federal tax law.
- j. Benefits derived from regulation.
- k. Indirect benefits derived from assistance to educational institutions.
- l. Assistance for a collaboration between a North Dakota institution of higher education and a business.
- m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
- n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
- o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
- p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
- q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.
- r. Federal or state assistance for the renewable energy program under chapter 54-63.

**SECTION 3.** A new section to chapter 54-63 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter, "advanced biofuel" means fuel derived from renewable biomass and includes:

1. Biofuel derived from cellulose, hemicellulose, or lignin;

2. Biofuel derived from sugar and starch other than ethanol derived from corn kernel starch;
3. Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
4. Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
5. Biogas, including landfill gas and sewage waste treatment gas, produced through the conversion of organic matter from renewable biomass;
6. Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and
7. Other fuel derived from cellulosic biomass.

**SECTION 4. AMENDMENT.** Section 54-63-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-63-01. Renewable energy council - Composition.** The industrial commission shall consult with the renewable energy council in matters of policy affecting the administration of the renewable energy development fund.

1. The renewable energy council consists of:
  - a. The commissioner of commerce or the commissioner's designee.
  - b. A member with a substantial interest in the agriculture industry appointed by the governor.
  - c. A member with a substantial interest in the biodiesel industry appointed by the governor representing biodiesel interests.
  - d. A member with a substantial interest in the biomass industry appointed by the governor representing biomass interests.
  - e. A member with a substantial interest in the wind industry appointed by the governor representing wind interests.
  - f. A member with a substantial interest in the ethanol industry appointed by the governor representing ethanol interests.
  - g. A member with a substantial interest in advanced biofuel and sugar-based biofuel, appointed by the governor.
2. Subject to subsection 6, the terms of office for members of the council are three years but of those first appointed, two serve for one year, two serve for two years, and ~~three~~ two serve for three years.
3. The commissioner of commerce shall serve as chairman.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called

by the chairman on written request of any three members. Four members constitute a quorum.

5. The council shall recommend to the industrial commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding, research, development, marketing, and educational projects or activities and any other matters related to this chapter. ~~Any grants, loans, or other financial assistance must be matched on a dollar-for-dollar basis.~~
6. Members of the council serve at the pleasure of the governor.

**SECTION 5. AMENDMENT.** Section 54-63-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-63-03. Industrial commission powers.**

1. The industrial commission may:
  - a. Make grants or loans, and provide other forms of financial assistance as necessary or appropriate, to qualified persons for funding research, development, marketing, and educational projects or activities, feasibility studies, applied research and demonstrations, venture capital investments, grants and matching grants, and low-interest loans and loan buydowns to foster the development of renewable energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and hydrogen, that is produced from the foregoing renewable energy sources. Any financial assistance that the commission awards to a project must not be the project's sole support. Any financial assistance the commission awards must be conditioned on the assurance that the applicant or a third party will support the project by either monetary or nonmonetary means. The amount of this additional support is at the commission's discretion.
  - b. Provide incentives for multifeed facilities to process corn ethanol, cellulosic ethanol, canola biodiesel, and soy biodiesel.
  - c. Provide incentives for scaleable technologies.
  - d. Provide incentives to increase ~~efficiencies such as~~ research and utilization of renewable energy coproduct utilization for livestock feed, human food products, and industrial use technologies.
  - e. Execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter.
  - f. Accept aid, grants, or contributions of money or other things of value from any source, to be held, used, and applied to carry out this chapter, subject to the conditions upon which the aid, grants, or contributions are made, including aid, grants, or contributions from any department, agency, or instrumentality of the United States for any purpose consistent with this chapter.



**CHAPTER 522****SENATE BILL NO. 2260**  
(Senators Schneider, Erbele, Hogue)  
(Representatives Kilichowski, Pietsch)

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to state matching funds for individual development accounts; to amend and reenact subdivision n of subsection 1 of section 50-09-29 of the North Dakota Century Code, relating to administration of the temporary assistance for needy families program; and to provide an appropriation.

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

<sup>218</sup> **SECTION 1. AMENDMENT.** Subdivision n of subsection 1 of section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

- n. ~~Consider exempting funds in~~ Exempt from assets and income the savings and proportionate matching funds in individual development accounts;

**SECTION 2.** A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter, unless the context otherwise requires:

1. "Community action agency" has the meaning as provided in section 54-44.5-01.
2. "Division" means the department of commerce division of community services.
3. "Eligible educational institution" means a division-approved institution of higher education or approved area vocational education school.
4. "Household" means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.
5. "Individual development account" means a matched savings account opened by a household participating in the North Dakota individual development account program.
6. "Permissible use" means any of the following:
  - a. Tuition at an eligible educational institution and expenses at an eligible educational institution, including books, eligible supplies, and equipment required for courses of instruction.

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<sup>218</sup> Section 50-09-29 was also amended by section 35 of House Bill No. 1436, chapter 482.

- b. For first-time home buyers, acquisition costs of acquiring or constructing a principal residence, including any usual or reasonable settlement, financing, or other closing costs. As used in this subdivision, acquisition costs of a principal residence has the same meaning as under section 1034 of the Internal Revenue Code of 1986 which do not exceed one hundred twenty percent of the average area purchase price applicable to the residence determined according to section 143(e)(2) and (3) of the Internal Revenue Code of 1986.
- c. Business capitalization expenses for expenditures on capital, plant, equipment, working capital, and inventory expenses of a legitimate business pursuant to a business plan approved by a community action agency.

**Funds awarded.** The division shall allocate state funds to participating community action agencies to provide matching funds for eligible individual development accounts. The division shall allocate funds to achieve geographic balance in the eight regions served by this program. The division shall document the capacity of participating community action agencies to manage the program and to raise the private match.

**Community action agency duties.** In order to be eligible to participate in this program, a community action agency shall:

1. Provide a separate account for the immediate deposit of program funds;
2. Establish a process to select participants and describe any priorities for participation;
3. Enter an individual development account agreement with the household to establish the terms of participation;
4. Provide households with economic literacy education;
5. Provide households with asset-specific education;
6. Provide matching deposits for participating household;
7. Coordinate with other related public and private programs; and
8. Establish a process to appeal and mediate disputes.

**Household eligibility - Participation.** To be eligible for matching funds under this chapter, a household:

1. Shall sign an individual development account agreement that includes the amount of scheduled deposits into the household's individual development account, the proposed use of the funds, and the proposed savings goal;
2. Shall agree to complete an economic literacy training program and asset-specific training; and
3. At the time of application, must have an income that does not exceed two hundred percent of the federal poverty line.

**Withdrawal - Matching - Permissible uses.**

1. To receive a match, a participating household must transfer funds withdrawn from the household's individual development account to the household's matching fund custodial account held by the community action agency, according to the individual development account agreement. The community action agency shall determine if the participating household's match request is for a permissible use consistent with the household's individual development account agreement.
2. At least quarterly and at the time of an approved withdrawal, the community action agency shall ensure the household's custodial account contains the applicable matching funds to match the balance in the household's individual development account, not including interest.
3. Matches must be provided as follows:
  - a. From matching funding provided under this chapter, a matching contribution of no more than one dollar for every one dollar of funds withdrawn from the household's individual development account, not to exceed a lifetime limit of two thousand dollars; and
  - b. From nonstate funds, a matching contribution of no less than one dollar for every one dollar of funds withdrawn from the household's individual development account, not to exceed a lifetime limit of two thousand dollars.
4. Upon receipt of transferred custodial account funds, the community action agency shall make a direct payment to the vendor of the goods or services for the permissible use.

**Consideration for assistance programs.** A state-administered, means-tested program may not adversely consider a household's individual development account savings and matching funds in determining eligibility for the program.

**Program reporting.** Quarterly, the fiscal agent on behalf of each community action agency participating in a North Dakota individual development account under this chapter shall report to the division, identifying the participants with accounts; the number of accounts; the amount of savings and matches for each participant's account; the uses of the account; and the number of businesses, homes, and educational services paid for with money from the account, as well as other information that may be required for the division to administer the program.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, to the department of commerce division of community services for the purpose of providing matching funds under section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 30, 2009  
Filed May 1, 2009

# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 523

### SENATE BILL NO. 2309

(Senators Potter, Anderson, Heckaman)  
(Representatives DeKrey, Kaldor, Wall)

AN ACT to provide for a study of linking and improving public sites along the Sibley and Sully historic trails for historical education, heritage tourism, and access for public hunting.

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

**SECTION 1. STUDY OF LINKING AND IMPROVING PUBLIC SITES ALONG THE SIBLEY AND SULLY HISTORIC TRAILS.** The parks and recreation department, state historical society of North Dakota, game and fish department, and the tourism division of the department of commerce shall conduct a study of the feasibility and desirability of linking and improving a series of public sites along the Sibley and Sully historic trails for purposes of historical education, heritage tourism, and access for public hunting. The parks and recreation department shall serve as the lead agency for the study and report the findings and recommendations of the study to the legislative council by September 1, 2010.

Approved April 8, 2009  
Filed April 9, 2009

# TAXATION

## CHAPTER 524

### SENATE BILL NO. 2244

(Senators Pomeroy, Anderson, Krebsbach, Lyson, Mathern)  
(Representative Myxter)

AN ACT to amend and reenact paragraph 2 of subdivision b of subsection 15 of section 57-02-08 and subsection 4 of section 57-02-27.2 of the North Dakota Century Code, relating to continuation of the farm residence exemption for the surviving spouse of a deceased farmer and the capitalization rate for valuation of agricultural property; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>219</sup> **SECTION 1. AMENDMENT.** Paragraph 2 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. ~~"Farmer"~~ For purposes of this paragraph, "farmer" includes a ~~"retired farmer" who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.~~ "beginning":
- (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

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<sup>219</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, and section 1 of Senate Bill No. 2247, chapter 526.

- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

<sup>220</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than eight ~~and nine-tenths percent for taxable year 2005 and eight and three-tenths percent for taxable years after 2005 year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011.~~ The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, and section 1 of this Act applies to the surviving spouse of a deceased farmer regardless of whether death occurred before or after January 1, 2009, if the occupancy by the surviving spouse has been continuous and otherwise qualifies under this Act.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>220</sup> Section 57-02-27.2 was also amended by section 2 of House Bill No. 1166, chapter 530, and section 1 of Senate Bill No. 2052, chapter 531.

**CHAPTER 525****HOUSE BILL NO. 1234**  
(Representatives Dosch, L. Meier)  
(Senator Dever)

AN ACT to amend and reenact subsection 22 of section 57-02-08 of the North Dakota Century Code, relating to the maximum amount of the property tax exemption for the home owned and occupied by a blind person; and to provide an effective date.

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

<sup>221</sup> **SECTION 1. AMENDMENT.** Subsection 22 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

22. All or any part of fixtures, buildings, and improvements upon any nonfarmland up to a taxable valuation of ~~five~~ seven thousand ~~two hundred~~ dollars, owned and occupied as a home by a blind person. Residential homes owned by the spouse of a blind person, or jointly owned by a blind person and spouse, shall also be exempt within the limits of this subsection as long as the blind person resides in the home. For purposes of this subsection, a blind person ~~shall be~~ is defined as one who is totally blind, has visual acuity of not more than 20/200 in the better eye with correction, or whose vision is limited in field so that the widest diameter subtends an angle no greater than twenty degrees. The exemption provided by this subsection extends to the entire building classified as residential, and owned and occupied as a residence by a person who qualifies for the exemption as long as the building contains no more than two apartments or rental units which are leased.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>221</sup> Section 57-02-08 was also amended by section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

## CHAPTER 526

### SENATE BILL NO. 2247

(Senators J. Lee, Dever, Robinson)

(Representatives Berg, N. Johnson, Mueller)

AN ACT to amend and reenact subsections 35 through 42 of section 57-02-08 of the North Dakota Century Code, relating to property tax exemptions for new construction; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>222</sup> **SECTION 1. AMENDMENT.** Subsections 35 through 42 of section 57-02-08 of the North Dakota Century Code are amended and reenacted as follows:

35. Up to ~~seventy five~~ one hundred fifty thousand dollars of the true and full value of all new single-family and condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is ~~begun~~ completed and the residence is owned and occupied for the first time if all of the following conditions are met:
- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
  - b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
  - c. ~~The first owner after the builder resides on the property, or the builder still owns the property. For purposes of this subsection, "builder" includes a person who builds that person's own residence.~~

~~For purposes of this subsection, "single family residential property" does not include condominium or townhouse property.~~

36. Up to ~~seventy five~~ seventy five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

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<sup>222</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, and section 1 of Senate Bill No. 2244, chapter 524.

- a. ~~The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.~~
  - b. ~~Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.~~
  - e. ~~The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.~~
- ~~37.~~ The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation, limited liability company, or organization licensed under chapter 50-11.1 or used primarily as an adult day care center. However, this exemption is not available for property used as a residence.
- ~~38.~~ 37. a. A pollution abatement improvement. As used in this subsection, "pollution abatement improvement" means property, exclusive of land and improvements to the land such as ditching, surfacing, and leveling, that is:
- (1) Part of an agricultural or industrial facility which is used for or has for its ultimate purpose the prevention, control, monitoring, reducing, or eliminating of pollution by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, measuring, or disposing of waste contaminants; or
  - (2) Part of an agricultural or industrial facility and required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.
- b. The exemption under this subsection applies only to that portion of the valuation of property attributable to the pollution abatement improvement on which construction or installation was commenced after December 31, 1992, and does not apply to the valuation of any property that is not a necessary component of the pollution abatement improvement. The governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, shall determine whether the property proposed for exemption is a pollution abatement improvement and may grant an exemption for the pollution abatement improvement based upon the requirements of this subsection.
- ~~39.~~ 38. The leasehold interest in property owned by the state which has been leased for pasture or grazing purposes or upon which payments in lieu of property taxes are made by the state.

- ~~40.~~ 39. Notwithstanding any other law, all property, including any possessory interest therein, relating to any waterworks, mains, and water distribution system leased to the state, or any agency or institution of the state, or to a private entity pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.
- ~~41.~~ 40. Notwithstanding any other law, all property, including any possessory interest therein, relating to any sewage systems and facilities for the collection, treatment, purification, and disposal in a sanitary manner of sewage leased to the state, or any agency or institution of the state, or to a private entity pursuant to section 40-34-19 or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.
- ~~42.~~ 41. Notwithstanding any other law, all property, including any possessory interest therein, leased to a private entity pursuant to section 54-01-27, which property is operated by, or providing services to, the state or its citizens.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 527****SENATE BILL NO. 2239**

(Senators Cook, Flakoll, Seymour)  
(Representatives Boehning, Dosch, Glasheim)

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to property tax assessments for new construction; and to provide an effective date.

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

<sup>223</sup> **SECTION 1.** A new subsection to section 57-02-08 of the North Dakota Century Code is created and enacted as follows:

- a. New single-family residential property, exclusive of the land on which it is situated, is exempt from assessment for the taxable year in which construction began and the next two taxable years, if the property remains owned by the builder, remains unoccupied, and all of the following conditions are met:
  - (1) The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of property under this subsection by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
  - (2) Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- b. A builder is eligible for exemption of no more than ten properties under this subsection in a taxable year within each jurisdiction that has approved the exemption under this subsection. For purposes of this subsection, "builder" includes an individual who builds that individual's own residence.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>223</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

**CHAPTER 528****SENATE BILL NO. 2402**

(Senators Hogue, Horne, J. Lee)  
(Representatives Bellew, Berg)

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to the homestead credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-08.1. Homestead credit.**

1. a. Any person sixty-five years of age or older or permanently and totally disabled, in the year in which the tax was levied, with an income that does not exceed the limitations of subdivision c is entitled to receive a reduction in the assessment on the taxable valuation on the person's homestead. An exemption under this subsection applies regardless of whether the person is the head of a family.
  - b. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person.
  - c. The exemption must be determined according to the following schedule:
    - (1) If the person's income is not in excess of ~~ten~~ eighteen thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~three~~ four thousand ~~three~~ five hundred ~~seventy-five~~ dollars of taxable valuation.
    - (2) If the person's income is in excess of ~~ten~~ eighteen thousand dollars and not in excess of ~~twelve~~ twenty thousand dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~two~~ three thousand ~~seven~~ six hundred dollars of taxable valuation.
    - (3) If the person's income is in excess of ~~twelve~~ twenty thousand dollars and not in excess of ~~fourteen~~ twenty-two thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand ~~twenty-five~~ seven hundred dollars of taxable valuation.

- (4) If the person's income is in excess of ~~fourteen~~ twenty-two thousand dollars and not in excess of ~~sixteen~~ twenty-four thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand ~~three~~ eight hundred ~~ifty~~ dollars of taxable valuation.
  - (5) If the person's income is in excess of ~~sixteen~~ twenty-four thousand dollars and not in excess of ~~seventeen~~ twenty-six thousand ~~five hundred~~ dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~six~~ nine hundred ~~seventy-five~~ dollars of taxable valuation.
- d. Persons residing together, as spouses or when one or more is a dependent of another, are entitled to only one exemption between or among them under this subsection. Persons residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full exemption under this subsection equal to their ownership interests in the property.
  - e. This subsection does not reduce the liability of any person for special assessments levied upon any property.
  - f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility.
  - g. A person is ineligible for the exemption under this subsection if the value of the assets of the person and any dependent residing with the person, excluding the unencumbered value of the person's residence that the person claims as a homestead, exceeds ~~fifty~~ seventy-five thousand dollars, including the value of any assets divested within the last three years. For purposes of this subdivision, the unencumbered valuation of the homestead is limited to one hundred thousand dollars.
  - h. The assessor shall attach the statement filed under subdivision f to the assessment sheet and shall show the reduction on the assessment sheet.
  - i. An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.
2.
    - a. Any person who would qualify for an exemption under subdivisions a and c of subsection 1 except for the fact that the person rents living quarters is eligible for refund of a portion of the person's annual rent deemed by this subsection to constitute the payment of property tax.
    - b. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether expressly set out in the rental agreement,

must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of ~~two~~ four hundred ~~forty~~ dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant.

- c. Persons who reside together, as spouses or when one or more is a dependent of another, are entitled to only one refund between or among them under this subsection. Persons who reside together in a rental unit, who are not spouses or dependents, are each entitled to apply for a refund based on the rent paid by that person.
  - d. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall issue refunds to applicants.
  - e. This subsection does not apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if those living quarters are exempt from property taxation and the owner is not making a payment in lieu of property taxes.
  - f. A person may not receive a refund under this section for a taxable year in which that person received an exemption under subsection 1.
3. All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. The county directors of tax equalization shall make these forms available upon request.
  4. A person whose homestead is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may not receive any property tax credit under this section.
  5. For the purposes of this section:
    - a. "Dependent" has the same meaning it has for federal income tax purposes.
    - b. "Homestead" has the same meaning as provided in section 47-18-01.
    - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.

- d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
- e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician or a written determination of disability from the social security administration.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, for ad valorem property taxes and for taxable years beginning after December 31, 2009, for mobile home taxes.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 529****SENATE BILL NO. 2201**

(Senators Cook, Nelson, Nodland)  
(Representatives Drovdal, Mueller)

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code and a new section to Senate Bill No. 2184, as approved by the sixty-first legislative assembly, relating to a property tax credit for disabled veterans and to declare Senate Bill No. 2184, as approved by the sixty-first legislative assembly, to be an emergency; to amend and reenact subsection 20 of section 57-02-08 and subdivision c of subsection 1 of section 57-55-10 of the North Dakota Century Code and section 2 of Senate Bill No. 2184, as approved by the sixty-first legislative assembly, relating to the property tax and mobile home tax exemptions for disabled veterans and the effective date of Senate Bill No. 2184, as approved by the sixty-first legislative assembly; to provide an appropriation; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Property tax credit for disabled veterans - Certification - Distribution.**

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements of the person's homestead equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of veterans affairs for the purpose of applying for a property tax exemption.
2. If two disabled veterans are married to each other and living together, their combined credits may not exceed one hundred percent of one hundred twenty thousand dollars of true and full value of the fixtures, buildings, and improvements of the homestead. If a disabled veteran co-owns the homestead property with someone other than the disabled veteran's spouse, the credit is limited to that disabled veteran's interest in the fixtures, buildings, and improvements of the homestead, to a maximum amount calculated by multiplying one hundred twenty thousand dollars of true and full valuation by the disabled veteran's percentage of interest in the homestead property and multiplying the result by the applicant's certified disability percentage.
3. A disabled veteran or unremarried surviving spouse claiming a credit under this section for the first time shall file with the county auditor an affidavit showing the facts herein required, a description of the property,

and a certificate from the United States department of veterans affairs, or its successor, certifying to the amount of the disability. The affidavit and certificate must be open for public inspection. A person shall thereafter furnish to the assessor or other assessment officials, when requested to do so, any information which is believed will support the claim for credit for any subsequent year.

4. For purposes of this section, and except as otherwise provided in this section, "homestead" has the meaning provided in section 47-18-01 except that it also applies to a person who otherwise qualifies under the provisions of this section whether the person is the head of the family.
5. This section does not reduce the liability of a person for special assessments levied upon property.
6. The board of county commissioners may cancel the portion of unpaid taxes that represents the credit calculated in accordance with this section for any year in which the qualifying owner has held title to the homestead property. Cancellation of taxes for any year before enactment of this section must be based on the law that was in effect for that tax year.
7. Before the first of March of each year, the county auditor of each county shall certify to the tax commissioner on forms prescribed by the tax commissioner the name and address of each person for whom the property tax credit for homesteads of disabled veterans was allowed for the preceding year, the amount of credit allowed, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in the taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.
8. The tax commissioner shall audit the certifications, make any corrections that may be required, and certify to the state treasurer for payment to each county on or before the first of June of each year, the sum of the amounts computed by multiplying the credit allowed for each homestead of a disabled veteran in the county by the total of the tax mill rates, exclusive of any state mill rates that were applied to other real estate in the taxing districts for the preceding year.
9. The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute the payment without delay to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
10. On or before the first day of June of each year, the tax commissioner shall certify to the state treasurer the amount computed by multiplying the property tax credit allowed under this section for homesteads of disabled veterans in the state for the preceding year by one mill for deposit in the state medical center fund.
11. Supplemental certifications by the county auditor and by the tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed in this section to make such corrections as may be necessary because of errors or because of

approval of an application for abatement filed by a person because the credit provided for the homestead of a disabled veteran was not allowed in whole or in part.

<sup>224</sup> **SECTION 2. AMENDMENT.** Subsection 20 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a homestead, as hereinafter defined, by any of the following persons:
  - a. A paraplegic disabled veteran of the United States armed forces or any veteran who has been awarded specially adapted housing by the ~~veterans' administration~~ department of veterans affairs, or the unmarried surviving spouse if such veteran is deceased, for the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.
  - b. ~~A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unmarried surviving spouse if the veteran is deceased for a percentage, equal to the percentage of the disabled veteran's certified rated service-connected disability, applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.~~
  - e. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unmarried surviving spouse of a permanently and totally disabled person. If the spouse of a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation applies as long as both reside thereon. The provisions of this subdivision do not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

~~Any person claiming an exemption under this subsection for the first time shall file with the county auditor an affidavit showing the facts herein required and a description of the property and, in addition, a disabled veteran claiming exemption under subdivision b shall also file with the affidavit a certificate from the United States veterans' administration, or its successors, certifying to the amount of the disability. The affidavit and certificate must be open for public inspection. After the initial filing of a claim for exemption under this~~

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<sup>224</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 1 of Senate Bill No. 2239, chapter 527, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

~~subsection, the exemption is automatically renewed each following year but the veteran or veteran's unremarried surviving spouse must refile if that person sells the property or no longer claims it as a primary place of residence or if the veteran dies or receives a change in the percentage of the certified rated service-connected disability. A person thereafter shall furnish to the assessor or other assessment officials when requested to do so any information that is believed will support the claim for exemption for a subsequent year.~~

For purposes of this subsection, and except as otherwise provided in this subsection, "homestead" has the meaning provided in section 47-18-01 except that it also applies to any person who otherwise qualifies under the provisions of this subsection whether or not the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which the veteran qualifying owner has held title to the exempt property.

~~This subsection does not apply within a county in which a resolution approved by the board of county commissioners is in effect disallowing the exemption under this subsection for the taxable year.~~

<sup>225</sup> **SECTION 3. AMENDMENT.** Subdivision c of subsection 1 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

- c. If it is owned and used as living quarters by a disabled veteran or unremarried surviving spouse who meets the requirements of subsection 20 of section 57-02-08 or section 1 of this Act.

**SECTION 4. AMENDMENT.** Section 2 of Senate Bill No. 2184, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after ~~June~~ April 30, 2009.

**SECTION 5.** A new section to Senate Bill No. 2184, as approved by the sixty-first legislative assembly, is created and enacted as follows:

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the state tax commissioner for the purpose of paying the state reimbursement under the disabled veteran credit under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. EFFECTIVE DATE.** Sections 1 through 3 of this Act are effective for taxable years beginning after December 31, 2008.

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<sup>225</sup> Section 57-55-10 was also amended by section 15 of House Bill No. 1301, chapter 327.

**SECTION 8. EMERGENCY.** Sections 4 and 5 of this Act are declared to be an emergency measure.

Approved April 30, 2009

Filed April 30, 2009

## CHAPTER 530

### HOUSE BILL NO. 1166

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 57-02-27.1, 57-02-27.2, 57-02-38, and 57-12-09, subsection 4 of section 57-14-08, and section 57-20-03 of the North Dakota Century Code, relating to the deletion of obsolete dates and references for the purposes of valuation and assessment of agricultural lands, assessment of unplatted, undeveloped, and nonagricultural real property located outside of a city, and notice requirements for increased property tax assessments; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-02-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-27.1. Property to be valued at true and full value.** ~~Beginning with the year 1984, all~~ All assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property ~~for the year 1984 and each year thereafter~~ must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city may establish valuations that recognize the supply of vacant lots available for sale.

<sup>226</sup> **SECTION 2. AMENDMENT.** Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-02-27.2. Valuation and assessment of agricultural lands.**

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

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<sup>226</sup> Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2052, chapter 531, and section 2 of Senate Bill No. 2244, chapter 524.

2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
  - a. Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.
  - b. The agricultural economics department of agribusiness and applied economics of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. The agricultural economics department of agribusiness and applied economics shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.
  - c. Divide the figure arrived at in subdivision b by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than ~~eight and nine-tenths percent for taxable year 2005~~ and eight and three-tenths percent ~~for taxable years after 2005~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).
5. The agricultural economics department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; shall compute the average agricultural value per acre [.40 hectare] for cropland, noncropland, and inundated agricultural land for each county;

and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing a minimum of ten contiguous acres if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more, and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland calculated by the agricultural economics department of agribusiness and applied economics of North Dakota state university. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March thirty-first of each year. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of agribusiness and applied economics of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future. Determinations made under this subsection may be appealed through the informal equalization process and formal abatement process provided for in this title.
7. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use soil type and soil classification data from detailed and general soil surveys.
8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by

the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization. In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations, which are listed in descending order of significance to the assessment determination:

- a. Soil type and soil classification data from detailed or general soil surveys.
  - b. The schedule of modifiers that must be used to adjust agricultural property assessments within the county as approved by the state supervisor of assessments under subsection 9.
  - c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.
9. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county a schedule of modifiers that must be used to adjust agricultural property assessments within the county and directions regarding how those modifiers must be applied by assessors. Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county.
10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after 2009, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each month from the state aid distribution fund under section 57-39.2-26.1 until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

**SECTION 3. AMENDMENT.** Section 57-02-38 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-38. Units of real property for assessment.** In all assessment books and tax lists and in all proceedings for the collection of taxes and proceedings founded thereon, unplatted land and undeveloped land platted before March 30, 1981, not situated within the limits of an incorporated city must be described in subdivisions not exceeding quarter sections. Real property in the platted portion of a city or real property platted on or after March 30, 1981, that is located outside any city and is not agricultural property under the conditions set out in subsection 1 of section 57-02-01, must be assessed separately as to each lot; ~~but when~~. When a building or structure covers two or more contiguous lots or parts of lots owned by the same person the assessment may not be entered separately as to each lot or part of lot, but the tract upon which the building is located must be described and assessed as one parcel. A block which has not been subdivided may be described, assessed, and taxed in a unit of one block. A failure to comply with the provisions of this section does not impair the validity of taxes.

**SECTION 4. AMENDMENT.** Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-12-09. Notice of increased assessment to real estate owner.** When any assessor has increased the true and full valuation of any lot or tract of land or including any improvements thereon ~~to by three thousand dollars or more than and to ten percent or more than the amount of the last assessment, written~~ notice of the amount of increase ~~over the last assessment~~ and the amount of the last assessment must be delivered in writing by the assessor to the property owner, mailed in writing to the property owner at the property owner's last-known address, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. Delivery of notice to a property owner under this section must be completed not fewer than fifteen days before the meeting of the local equalization board. The tax commissioner shall prescribe suitable forms for this notice and the notice must show the true and full value as defined by law of the property, including improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. The notice must be mailed or delivered at the expense of the assessment district for which the assessor is employed.

**SECTION 5. AMENDMENT.** Subsection 4 of section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

4. When any special assessor has increased the true and full valuation of any lot or tract of land ~~together with~~ including any improvements to that lot or tract of land by ~~fifteen~~ three thousand dollars or more and to ten percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered in writing by the special assessor to the property owner ~~or~~, mailed in writing to the property owner at the property owner's last-known address ~~except that no notice need be delivered or mailed if the true and full valuation is increased by less than three thousand dollars, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice.~~ The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the reassessment and must also show the date prescribed by law for the meeting of the special board of equalization of the assessment district in which the property is located. ~~This Delivery of notice must be mailed or delivered to the property owner under this section must be completed at least ten fifteen days in advance of the meeting date of the special board of equalization and must be mailed or delivered at the expense of the assessment district for which the special assessor is employed.~~

**SECTION 6. AMENDMENT.** Section 57-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-03. Form of tax list.** The tax list must be made out to correspond with the assessment books ~~as respects~~ with respect to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite such description of property. The amounts of special taxes must be entered in appropriate columns, but the general taxes may be shown by entering the rate of each tax at the head of the proper

column without extending the same, in which case a schedule of the rates of such taxes must be made on the first page of each tax list. The tax lists also must show, in a separate column, the years for which a tax lien has been foreclosed upon any piece or parcel ~~has been sold for taxes~~, if the same has not been redeemed or deeded for such taxes.

**SECTION 7. EFFECTIVE DATE.** Sections 3 and 4 of this Act are effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 531****SENATE BILL NO. 2052**

(Legislative Council)  
(Taxation Committee)

AN ACT to amend and reenact subsection 10 of section 57-02-27.2 of the North Dakota Century Code, relating to extension of the deadline for counties to implement use of soil survey data in agricultural property tax assessments; and to provide an effective date.

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

<sup>227</sup> **SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after ~~2009~~ 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each month from the state aid distribution fund under section 57-39.2-26.1 until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>227</sup> Section 57-02-27.2 was also amended by section 2 of House Bill No. 1166, chapter 530, and section 2 of Senate Bill No. 2244, chapter 524.

**CHAPTER 532****HOUSE BILL NO. 1382**  
(Representatives Onstad, S. Meyer)

AN ACT to amend and reenact section 57-06-03 of the North Dakota Century Code, relating to assessment of oil or gas pipeline property; and to provide an effective date.

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

<sup>228</sup> **SECTION 1. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-03. Operative property defined.** The term "operative property" means any and all property reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property must be assessed by the state board of equalization as operative property of the company. Notwithstanding any other provision of law, all oil or gas pipeline property that is not exempt from ad valorem taxation is subject to assessment by the state board of equalization under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2009.

Approved March 24, 2009  
Filed March 24, 2009

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<sup>228</sup> Section 57-06-03 was also amended by section 4 of Senate Bill No. 2297, chapter 539.

**CHAPTER 533****SENATE BILL NO. 2031**

(Legislative Council)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-06-14.1 of the North Dakota Century Code, relating to taxable valuation of centrally assessed wind turbine electric generators.

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

**SECTION 1. AMENDMENT.** Section 57-06-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-14.1. Taxable valuation of centrally assessed wind turbine electric generators.** A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more on which construction is completed before January 1, ~~2014~~ 2015, must be valued at three percent of assessed value to determine taxable valuation of the property except:

1. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which a purchased power agreement ~~has been~~ was executed after April 30, 2005, and before January 1, 2006, and ~~construction is~~ was completed after April 30, 2005, and before July 1, 2006, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property for the duration of the initial purchased power agreement for the generation unit; and
2. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed after June 30, 2006, and before January 1, ~~2014~~ 2015, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 534****HOUSE BILL NO. 1401**

(Representatives Koppelman, Brandenburg, Headland)  
(Senators Miller, Oehlke, Wanzek)

AN ACT to create and enact a new section to chapter 57-13 of the North Dakota Century Code, relating to limitations on the valuation of residential and commercial property as determined by the sales ratio study.

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

**SECTION 1.** A new section to chapter 57-13 of the North Dakota Century Code is created and enacted as follows:

**Residential and commercial property true and full value.** In equalizing valuation and assessment of property among assessment districts, the state board of equalization may not approve valuation and assessment in any taxing district in which the true and full value for residential and commercial property as assessed and equalized in that district exceeds the true and full value for those property classifications in that taxing district as determined by the sales ratio study.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 535****SENATE BILL NO. 2199**

(Senators Wardner, Cook, O'Connell)  
(Representatives Kaldor, Monson, Svedjan)

AN ACT to create a property tax relief sustainability fund; to create and enact two new subdivisions to subsection 3 of section 57-15-01.1 and chapter 57-64 of the North Dakota Century Code, relating to allocation of state funds to school districts for mill levy reduction grants; to amend and reenact sections 57-15-14, 57-15-31, and 57-38-30 and subsection 1 of section 57-38-30.3 of the North Dakota Century Code, relating to property tax levies of school districts, corporate income tax rates, and income tax rates for individuals, estates, and trusts; to repeal section 15.1-27-20.1 of the North Dakota Century Code, relating to the effect of the general fund levy of school districts on state aid allocations; to provide an appropriation; to provide for transfers; and to provide an effective date.

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

**SECTION 1.** Two new subdivisions to subsection 3 of section 57-15-01.1 of the North Dakota Century Code are created and enacted as follows:

Increased, for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the base year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year.

Reduced for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the budget year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the base year.

<sup>229</sup> **SECTION 2. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. General fund levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the district, except that:

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<sup>229</sup> Section 57-15-14 was also amended by section 47 of House Bill No. 1400, chapter 175.

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
  - a. ~~There~~ there may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
  - b. ~~There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.~~
2. In any school district having a total population of ~~less~~ fewer than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. After June 30, ~~2007~~ 2009, in any school district election for approval by electors of ~~unlimited~~ or increased levy authority under subsection 1 or 2, the ballot must specify the number of mills, ~~the percentage increase in dollars levied, or that unlimited levy authority is~~ proposed for approval, and the number of taxable years for which that approval is to apply. After June 30, ~~2007~~ 2009, approval by electors of ~~unlimited~~ or increased levy authority under subsection 1 or 2 may not be effective for more than ten taxable years.
4. The authority for a levy of up to a specific number of mills under this section approved by electors of a school district before July 1, 2009, is terminated effective for taxable years after 2015. If the electors of a school district subject to this subsection have not approved a levy for taxable years after 2015 of up to a specific number of mills under this section by December 31, 2015, the school district levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or this section.
5. The authority for an unlimited levy approved by electors of a school district before July 1, 2009, is terminated effective for taxable years after 2015. If the electors of a school district subject to this subsection have not approved a levy of up to a specific number of mills under this section by December 31, 2015, the school district levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or this section.

The question of authorizing or discontinuing such specific number of mills authority ~~or unlimited taxing authority~~ in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to ten percent of the number of electors who cast votes in the most recent election in the school district. However, not fewer than twenty-five signatures are required ~~unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be~~

determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

**SECTION 3. AMENDMENT.** Section 57-15-31 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-31. Determination of levy.** The amount to be levied by any county, city, township, school district, park district, or other municipality authorized to levy taxes shall be computed by deducting from the amount of estimated expenditures for the current fiscal year as finally determined, plus the required reserve fund determined upon by the governing board from the past experience of the taxing district, the total of the following items:

1. The available surplus consisting of the free and unencumbered cash balance.
2. Estimated revenues from sources other than direct property taxes.
3. The total estimated collections from tax levies for previous years.
4. Such expenditures as are to be made from bond sources.
5. The amount of distributions received from an economic growth increment pool under section 57-15-61.
6. The estimated amount to be received from payments in lieu of taxes on a project under section 40-57.1-03.
7. The amount reported to a school district by the superintendent of public instruction as the school district's mill levy reduction grant for the year under section 57-64-02.

Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the amount of the levy.

**SECTION 4. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first ~~three~~ twenty-five thousand dollars of taxable income, at the rate of two and ~~six-tenths~~ one-tenth percent.
- b. On all taxable income ~~above three~~ exceeding twenty-five thousand dollars and not in ~~excess of eight~~ exceeding fifty thousand dollars, at the rate of ~~four and one-tenth~~ five and twenty-five hundredths percent.
- c. On all taxable income ~~above eight~~ exceeding fifty thousand dollars and not in ~~excess of twenty thousand~~ dollars, at the rate of ~~five and six-tenths~~ six and four-tenths percent.

- d. On all taxable income above twenty thousand dollars and not in excess of thirty thousand dollars, at the rate of six and four-tenths percent.
- e. On all taxable income above thirty thousand dollars, at the rate of six and one-half percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

<sup>230</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:

Not over ~~\$27,050~~ \$33,950  
 Over ~~\$27,050~~ \$33,950 but not  
 over ~~\$66,550~~ \$82,250  
 Over ~~\$66,550~~ \$82,250 but not  
 over ~~\$136,750~~ \$171,550  
 Over ~~\$136,750~~ \$171,550 but not  
 over ~~\$297,350~~ \$372,950  
 Over ~~\$297,350~~ \$372,950

The tax is equal to:

~~2.40%~~ 1.84%  
~~\$568.05~~ \$624.68 plus ~~3.92%~~ 3.44%  
 of amount over ~~\$27,050~~ \$33,950  
~~\$2,077.25~~ \$2,286.20 plus ~~4.34%~~ 3.81%  
 of amount over ~~\$66,550~~ \$82,250  
~~\$5,167.33~~ \$5,688.53 plus ~~5.04%~~ 4.42%  
 of amount over ~~\$136,750~~ \$171,550  
~~\$13,264.57~~ \$14,590.41 plus ~~5.54%~~ 4.86%  
 of amount over ~~\$297,350~~ \$372,950

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

Not over ~~\$45,200~~ \$56,750

The tax is equal to:

~~2.40%~~ 1.84%

<sup>230</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, and section 2 of Senate Bill No. 2388, chapter 549.

Over <del>\$45,200</del> <u>\$56,750</u> but not over <del>\$100,250</del> <u>\$137,050</u>	<del>\$949.20</del> <u>\$1,044.20</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$45,200</del> <u>\$56,750</u>
Over <del>\$100,250</del> <u>\$137,050</u> but not over <del>\$166,500</del> <u>\$208,850</u>	<del>\$3,459.96</del> <u>\$3,806.52</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$100,250</del> <u>\$137,050</u>
Over <del>\$166,500</del> <u>\$208,850</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,944.64</del> <u>\$6,542.10</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$166,500</del> <u>\$208,850</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.46</del> <u>\$13,795.32</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

If North Dakota taxable income is:

Not over <del>\$22,600</del> <u>\$28,375</u>	Over <del>\$22,600</del> <u>\$28,375</u> but not over <del>\$54,625</del> <u>\$68,525</u>
Over <del>\$54,625</del> <u>\$68,525</u> but not over <del>\$83,250</del> <u>\$104,425</u>	Over <del>\$83,250</del> <u>\$104,425</u> but not over <del>\$148,675</del> <u>\$186,475</u>
Over <del>\$148,675</del> <u>\$186,475</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$474.60</del> <u>\$522.10</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$22,600</del> <u>\$28,375</u>
<del>\$1,729.98</del> <u>\$1,903.26</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$54,625</del> <u>\$68,525</u>	<del>\$2,072.34</del> <u>\$3,271.05</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$83,250</del> <u>\$104,425</u>
<del>\$6,269.73</del> <u>\$6,897.66</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$148,675</del> <u>\$186,475</u>	

d. Head of household.

If North Dakota taxable income is:

Not over <del>\$36,250</del> <u>\$45,500</u>	Over <del>\$36,250</del> <u>\$45,500</u> but not over <del>\$93,650</del> <u>\$117,450</u>
Over <del>\$93,650</del> <u>\$117,450</u> but not over <del>\$151,650</del> <u>\$190,200</u>	Over <del>\$151,650</del> <u>\$190,200</u> but not over <del>\$297,350</del> <u>\$372,950</u>
Over <del>\$297,350</del> <u>\$372,950</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$761.25</del> <u>\$837.20</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$36,250</del> <u>\$45,500</u>
<del>\$3,011.33</del> <u>\$3,312.28</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$93,650</del> <u>\$117,450</u>	<del>\$5,528.53</del> <u>\$6,084.06</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$151,650</del> <u>\$190,200</u>
<del>\$12,871.84</del> <u>\$14,161.61</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>	

e. Estates and trusts.

If North Dakota taxable income is:

Not over <del>\$1,800</del> <u>\$2,300</u>	Over <del>\$1,800</del> <u>\$2,300</u> but not over <del>\$4,250</del> <u>\$5,350</u>
Over <del>\$4,250</del> <u>\$5,350</u> but not over <del>\$6,500</del> <u>\$8,200</u>	Over <del>\$6,500</del> <u>\$8,200</u> but not over <del>\$8,900</del> <u>\$11,150</u>
Over <del>\$8,900</del> <u>\$11,150</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$37.80</del> <u>\$42.32</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$1,800</del> <u>\$2,300</u>
<del>\$133.84</del> <u>\$147.24</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$4,250</del> <u>\$5,350</u>	<del>\$231.49</del> <u>\$255.83</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$6,500</del> <u>\$8,200</u>
<del>\$352.45</del> <u>\$386.22</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$8,900</del> <u>\$11,150</u>	

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, ~~2004~~ 2009, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

**SECTION 6.** Chapter 57-64 of the North Dakota Century Code is created and enacted as follows:

**57-64-01. Definitions.** For purposes of this chapter:

1. "Combined education mill rate" means the combined number of mills levied by a school district for the general fund, high school tuition, and high school transportation.
2. "Qualifying school district" means a school district that meets the conditions and requirements of this chapter to receive a mill levy reduction grant.
3. "Weighted student unit" means weighted student unit as determined for the school district under chapter 15.1-27.

**57-64-02. Mill levy reduction allocation and grant.** Each qualifying school district in the state is entitled to a mill levy reduction allocation and grant as provided in this chapter, subject to legislative appropriation to the superintendent of public instruction.

1. The mill levy reduction allocation rate for each qualifying school district is equal to the payments to the school district based on the per student payment rate as determined for the school year under chapter 15.1-27.
2. The grant to a qualifying school district may not exceed the smallest of:
  - a. The allocation determined under subsection 1;
  - b. The taxable valuation of property in the school district in the previous taxable year times the number of mills determined by subtracting one hundred mills from the combined education mill rate of the school district for taxable year 2008; or

- c. The taxable valuation of property in the school district in the previous taxable year times seventy-five mills.
3. The grant to a qualifying school district may not be less than the grant to that school district in the preceding school year.
4. The superintendent of public instruction shall report to each qualifying school district by July fifteenth of each year the mill levy reduction grant in dollars available to that school district during the upcoming school year.
5. By December first, January first, February first, and March first of each school year, the superintendent of public instruction shall forward to each qualifying school district installments equal to twenty-five percent of the total mill levy reduction grant the district is eligible to receive during that school year.
6. Allocations to a school district under this chapter are not considered per student payments or state aid for purposes of chapter 15.1-27.
7. For all purposes under law relating to allocation of funds among political subdivisions based on property tax levies, property taxes levied by a school district are the amount that would have been levied without the mill reduction grant provided to the school district under this chapter.

#### **57-64-03. School district levy compliance.**

1. To be eligible to receive a grant under this chapter, a qualifying school district must establish a spending level that does not result in a general fund mill rate exceeding one hundred ten mills. The certificate of levy form filed with the county auditor by a qualifying school district must reflect the revenue to be received by the school district under this chapter and that the general fund mill rate for the school district will not exceed one hundred ten mills unless:
  - a. The district has approval of a majority of the electors of the school district for a higher levy;
  - b. The higher levy is the result of a school district reorganization in compliance with chapter 15.1-12; or
  - c. The higher levy does not produce an amount in dollars exceeding the amount allowed under section 57-15-01.1 for taxable year 2008 reduced by the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year.
2. The authority under subdivision b of subsection 1 for a school district to levy a general fund mill rate exceeding one hundred ten mills applies for not more than ten taxable years after taxable year 2008 unless a majority of the electors of the school district approve an extension of that authority. Approval by electors of extension of levy authority under subdivision a or b of subsection 1 is effective for not more than ten taxable years at a time. A ballot measure for approval by electors of extension of levy authority under subdivision a or b of subsection 1 is subject to the following:

- a. The ballot measure must specify the number of mills for the general fund mill rate for which approval is sought.
- b. If a ballot measure for approval of authority to levy a specific number of mills is not approved by a majority of the electors of the school district voting on the question, the school district general fund levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or 57-15-14.

**57-64-04. Levy reduction priority.** In setting mill rates for qualified school districts, the county auditor shall apply funds allocated to a school district under this chapter for mill levy reduction first to reduce the number of mills levied for general fund purposes and, if allocation funds remain after the general fund mill rate is reduced to zero, the balance must be applied to reduce the high school tuition levy and then to reduce the high school transportation levy of the qualified school district.

**SECTION 7. Property tax relief sustainability fund.** The property tax relief sustainability fund is a special fund in the state treasury. Moneys in the fund may be spent, pursuant to legislative appropriations, for property tax relief programs.

<sup>231</sup> **SECTION 8. REPEAL.** Section 15.1-27-20.1 of the North Dakota Century Code is repealed.

**SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$295,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of allocation of mill levy reduction grants to school districts under chapter 57-64, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. TRANSFER - PERMANENT OIL TAX TRUST FUND - GENERAL FUND.** The office of management and budget shall transfer the sum of \$295,000,000 from the permanent oil tax trust fund to the general fund on July 1, 2009.

**SECTION 11. TRANSFER - PERMANENT OIL TAX TRUST FUND - PROPERTY TAX RELIEF SUSTAINABILITY FUND.** The office of management and budget shall transfer the sum of \$295,000,000 from the permanent oil tax trust fund to the property tax relief sustainability fund on July 1, 2010.

**SECTION 12. EFFECTIVE DATE.** Sections 1, 2, 3, 4, and 5 of this Act are effective for taxable years beginning after December 31, 2008.

Approved April 30, 2009  
Filed April 30, 2009

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<sup>231</sup> Section 15.1-27-20.1 was also repealed by section 64 of House Bill No. 1400, chapter 175.

**CHAPTER 536****SENATE BILL NO. 2222**

(Senators Klein, Erbele, Taylor)  
(Representatives DeKrey, Kaldor)

AN ACT to amend and reenact section 57-15-28 of the North Dakota Century Code, relating to discontinuance of county emergency fund levies.

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

**SECTION 1. AMENDMENT.** Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-28. Emergency fund - County.** The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding the determination to expend emergency funds, or for the purchase of road equipment; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance remaining in the emergency fund at the end of any fiscal year must be kept in the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, ~~or~~ ten mills on the taxable valuation of property in a county with a population of less than thirty thousand but more than five thousand, or fifteen mills on the taxable valuation of property in a county with a population of five thousand or fewer, the levy authorized by this section must be discontinued, and no further levy may be made until required to replenish the emergency fund.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 537****HOUSE BILL NO. 1505**

(Representatives Conrad, Pinkerton, Wolf)  
(Senator Horne)

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to relevy by a township of property taxes omitted by mistake; to provide an effective date; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

**(Effective through December 31, 2013) Mistake in township levy - Levy increase in later year - Levy reverts.**

1. Notwithstanding section 57-15-01.1, 57-15-19, 57-15-19.4, or 57-15-19.6, if a mistake occurred in the 2008 tax year which resulted in a reduction of the amount intended and approved to be levied by a township, as of the October tenth deadline under section 57-15-31.1, not being levied and the mistake has been brought to the attention of the county auditor by February 1, 2009, the township may include the amount that was mistakenly not levied in the township's levy for a single tax year, or spread among one or more tax years, in tax years 2009 through 2013.
2. If the resulting levy for the tax year exceeds limitations otherwise established by law, the township need not comply with chapter 57-17.
3. After a tax year in which a township's levy increase authority under this section is exhausted, the township's levy must revert to the levy as it would have been determined without application of this section, plus any increase authorized by law or the township may elect to apply subsection 5 to determine its levy limitation.
4. Before any taxable year may be used as a "base year" under section 57-15-01.1, any amount included in that taxable year's levy under this section must be deducted.
5. A township that uses this section to determine its levy may use the amount it intended to levy in the 2008 tax year as its "base year" under section 57-15-01.1.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable years beginning after December 31, 2008, and before January 1, 2014, and is thereafter ineffective.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 538****HOUSE BILL NO. 1163**  
(Political Subdivisions Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-33.1-08 of the North Dakota Century Code, relating to the transfer of transmission line tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-33.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-33.1-08. Allocation by state treasurer.** The state treasurer, ~~on or before~~ by July fifteenth ~~thirty-first~~ of each year, shall allocate all moneys received under the provisions of this chapter in the following manner:

1. During the first two years during which a cooperative operates an electrical energy generating plant, all of the annual revenue received from the taxation thereof in each county must be allocated to that county.
2. Thereafter, the first fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants located in each county, pursuant to subsection 1 of section 57-33.1-02, must be allocated one hundred percent to that county. The second fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue in excess of one hundred thousand dollars received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund.
3. All revenue derived from the taxation of transmission lines must be allocated as provided in subsection 2 of section 57-33.1-02.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 539****SENATE BILL NO. 2297**

(Senators Cook, Klein, Triplett)

(Representatives Belter, Monson, Mueller)

AN ACT to create and enact chapter 57-33.2 of the North Dakota Century Code, relating to taxation of generation, distribution, and transmission of electric power; to amend and reenact sections 10-13-04, 17-05-12, 49-21.1-01.1, 57-06-03, 57-06-17.3, and 57-60-06 of the North Dakota Century Code, relating to references to assessment and imposition of taxes against centrally assessed electric power companies and taxation of rural electric cooperatives and cooperative electrical generating plants; to repeal chapters 57-33 and 57-33.1 of the North Dakota Century Code, relating to taxation of rural electric cooperatives and cooperative electrical generating plants; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 10-13-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-13-04. Members of electric cooperatives.** All persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative organized under this chapter shall be eligible to membership in the cooperative. No person other than the incorporators shall be, become, or remain a member of a cooperative unless such person shall use or agree to use electrical energy or the facilities, supplies, equipment, and services furnished by a cooperative.

"Rural area" means any area not included within the boundaries of an incorporated city having a population in excess of twenty-five hundred inhabitants at the time a corporation or cooperative commences to operate electric facilities or to furnish electric energy in such an area, and includes both the farm and nonfarm population thereof. No change thereafter in the population of a rural area, as defined herein, regardless of the reason for such change, shall operate to affect in any way its status as a rural area for the purposes of this chapter ~~and of chapter 57-33.~~

An electric cooperative organized under this chapter may become a member of another such electric cooperative and may avail itself fully of the facilities and services thereof.

**SECTION 2. AMENDMENT.** Section 17-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-12. Exemption from property taxes.** Transmission facilities built under this chapter are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by ~~subsection 2 of section~~

~~57-33.1-02~~ 57-33.2-02 without application of the discounts provided in that ~~subsection~~ section.

**SECTION 3. AMENDMENT.** Section 49-21.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-21.1-01.1. Electricity transmission and distribution lines - Differentiation.** Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and ~~chapters 57-33 and 57-33.1~~ chapter 57-33.2, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

<sup>232</sup> **SECTION 4. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-03. Operative property defined.** The term "operative property" means any and all property that is not exempt under this chapter by reason of an election filed under chapter 57-33.2 and which is reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property that is not exempt under this chapter by reason of an election filed under chapter 57-33.2 must be assessed by the state board of equalization as operative property of the company.

**SECTION 5. AMENDMENT.** Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-17.3. New transmission line property tax exemption.** A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and property taxes as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.

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<sup>232</sup> Section 57-06-03 was also amended by section 1 of House Bill No. 1382, chapter 532.

2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to the same manner of imposition and allocation as the tax imposed by subsection 2 of section 57-33.1-02 allocation among counties in the proportion that the miles of that transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

For purposes of this section, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

**SECTION 6.** Chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

**57-33.2-01. Definitions.** As used in this chapter:

1. "Collector system" means all property used or constructed to interconnect individual wind turbines within a wind farm into a common project, including step-up transformers, electrical collection equipment, collector substation transformers, and communication systems.
2. "Commissioner" means the state tax commissioner.
3. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in generation, distribution, or transmission of electricity. A company subject to taxation under chapter 57-06, is not a "company" for purposes of this chapter unless it files an irrevocable election with the commissioner to be treated as a company under this chapter by October 1, 2009, for taxable periods after December 31, 2009; by October 1, 2010, for taxable periods after December 31, 2010; by October 1, 2011, for taxable periods after December 31, 2011; or by October 1, 2012, for taxable periods after December 31, 2012. Property subject to taxation under this chapter which is owned by a company that is otherwise taxable under chapter 57-06 which files an election under this chapter is exempt from taxation under chapter 57-06.
4. "Distribution company" means a company engaged in distribution of electricity for retail sale to consumers in this state through distribution lines. The term does not include a municipal electric utility operated under chapter 40-33 and that utility is not subject to taxes under section 57-33.2-03.

5. "Distribution line" means a line to transmit electricity which operates at a voltage of less than forty-one and six-tenths kilovolts.
6. "Retail sale" means transfer of electricity to the end-use consumer for consideration. The term does not include the sale of electricity to a coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.
7. "Transmission company" means a company engaged in transmission of electricity through transmission lines.
8. "Transmission line" means a line to transmit electrical energy which operates at a voltage of forty-one and six-tenths kilovolts or more but does not include a line owned or operated by an agency or instrumentality of the United States government.
9. "Wind farm" means all property used or constructed for the purpose of producing electricity for commercial purposes utilizing the wind as an energy source and with a nameplate capacity of at least two thousand five hundred kilowatts. The term includes the collector system.
10. "Wind generator" means an individual wind turbine with a generation capacity of one hundred kilowatts or more which is connected to a transmission or distribution system.

**57-33.2-02. Transmission line mile tax - Exemption.** Transmission lines are subject to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating voltages on January first of each year, as follows:

1. For transmission lines that operate at a nominal operating voltage of less than fifty kilovolts, a tax of fifty dollars.
2. For transmission lines that operate at a nominal operating voltage of fifty kilovolts or more, but less than one hundred kilovolts, a tax of one hundred dollars.
3. For transmission lines that operate at a nominal operating voltage of one hundred kilovolts or more, but less than two hundred kilovolts, a tax of two hundred dollars.
4. For transmission lines that operate at a nominal operating voltage of two hundred kilovolts or more, but less than three hundred kilovolts, a tax of four hundred dollars.
5. For transmission lines that operate at a nominal operating voltage of three hundred kilovolts or more, a tax of six hundred dollars.
6. A transmission line initially placed in service after January 1, 2009, is exempt from transmission line taxes under this section for the first taxable year after the line is initially placed in service, and transmission line taxes under this section must be reduced by:
  - a. Seventy-five percent for the second taxable year of operation of the transmission line.

- b. Fifty percent for the third taxable year of operation of the transmission line.
- c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation, such transmission lines are subject to the standard transmission line taxes under this section.

**57-33.2-03. Distribution taxes.** A distribution company is subject to a tax at the rate of one dollar per megawatt-hour for retail sale of electricity delivered to a consumer in this state during the calendar year. Distribution taxes under this section do not apply to the sale of electricity to any coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.

**57-33.2-04. Wind generation taxation - Taxation of generation from sources other than coal - Taxation of coal generation not subject to coal conversion taxes.** Wind generators, including wind farms and associated collector systems, generators of electricity from sources other than coal owned by a company subject to taxation under this chapter, and generators of electricity from coal which are not subject to coal conversion taxes under chapter 57-60 are subject to taxes under this section.

1. Wind generators, wind farms, and associated collector systems are subject to taxes consisting of the following two components:
  - a. A tax of two dollars and fifty cents per kilowatt times the rated capacity of the wind generator.
  - b. A tax of one-half of one mill per kilowatt-hour of electricity generated by the wind generator during the taxable period.
2. Grid-connected generators that are part of a project with generation capacity of one hundred kilowatts or more not produced from coal or wind, or produced from coal and not subject to coal conversion taxes under chapter 57-60, are subject to taxes consisting of the following two components:
  - a. Fifty cents per kilowatt times the rated capacity of the generation unit.
  - b. One mill per kilowatt-hour of electricity generated by the production unit during the taxable period.

**57-33.2-05. Taxes in lieu of property taxes.** Taxes imposed by the state board of equalization under this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real or personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is owned and used by a company in the operation and conduct of the business of generation or delivery of electricity through distribution or transmission lines. Taxes under this chapter are not in lieu of property taxes on the following:

1. Property taxes on land on which generation, transmission, or distribution buildings, structures, or improvements are located, including buildings,

structures, or improvements used for administrative purposes relating to generation, transmission, or distribution of electricity.

2. City franchise fees on public utilities.

This chapter does not abridge the power of a governing board of a city to franchise the construction and operation of a public utility.

**57-33.2-06. Transmission and distribution line location reports to county auditors.** By May first of each year, each transmission or distribution company shall file, with the county auditor of each county in which any of its transmission or distribution line is located, a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this section must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this section must be prepared to distinguish transmission lines from distribution lines. By April first of each year, the county auditor shall provide each transmission or distribution company having a transmission or distribution line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

**57-33.2-07. Filing of reports with commissioner.** By May first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the commissioner on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August meeting of the state board of equalization. Required information includes:

1. a. The company name.
  - b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing such actions.
  - c. The location of its principal office.
  - d. The place where the company's books, papers, and accounts are kept.
  - e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.
  - f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.
2. A copy of each report filed with any county auditor under section 57-33.2-06.
  3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in

each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.

4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

**57-33.2-08. Delinquent taxes - Penalty.** Taxes under this chapter are due January first for the preceding taxable year and are delinquent if not received by the commissioner by March first following the due date. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon an additional audit an additional tax is found to be due, there must be added to the tax due a penalty at the rate of one percent of the tax due for each month or fraction of a month during the first year during which the tax remains unpaid, computed from March first. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency.

**57-33.2-09. Taxes paid on worthless accounts.** Distribution taxes paid from retail sales to accounts found to be worthless and charged off in accordance with generally accepted accounting principles may be credited against subsequent payment of taxes under section 57-33.2-03. If accounts that have been claimed as a credit under this section are later collected, a tax under section 57-33.2-03 must be paid on the amount collected.

**57-33.2-10. Powers of commissioner.** The commissioner may require any company subject to taxes imposed by this chapter to furnish any information the commissioner determines necessary to compute correctly the amount of the tax under this chapter. The commissioner may examine the books, records, and files of a company. The commissioner may conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any company or person and may make any investigation deemed necessary to obtain a full and complete disclosure of facts necessary to administer the tax under this chapter.

**57-33.2-11. Commissioner to audit reports and state board of equalization to assess tax.** The commissioner may audit reports of distribution companies and transmission companies not later than three years after the due date of the report, or three years after the report was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the commissioner shall notify the taxpayer in detail as to the reason for the increase.

**57-33.2-12. Deficiency, protest, and appeal.**

1. When the amount of taxes due is understated on a return because of a mathematical or clerical error, the commissioner shall notify the company of the error and the amount of additional taxes due. This notice is not a notice of deficiency and the company has no right to protest.
2. If upon an audit the commissioner finds additional taxes due, the commissioner shall notify the company and the state board of equalization of the deficiency in the tax amount. A notice of deficiency

must be sent to the company by first-class mail and must state the amount of additional taxes due and set forth the reasons for the increase.

3. A company has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional taxes due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a company fails to file a written protest within the time provided, the amount of additional taxes stated in the notice of deficiency becomes finally and irrevocably fixed. If a company protests only a portion of the commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional taxes due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the company a notice of reconsideration and assessment which must respond to the company's protest and assess the amount of any additional taxes due. The amount set forth in that notice becomes finally and irrevocably fixed unless the company brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

#### **57-33.2-13. Claims for credit or refund.**

1. A company may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within six months after the due date of the return or within six months after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the commissioner an amended return, or other report as prescribed by the commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The commissioner shall notify the company if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the company brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

**57-33.2-14. Preservation of records.** Every company required to make a return and pay any taxes under this chapter shall preserve records of retail sales as the commissioner may require. Every company shall preserve for a period of three years and three months all invoices and other records of electricity delivered to a consumer in this state. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

**57-33.2-15. Lien for tax.** The tax under this chapter constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien is subject to

collection, indexing, and other action in the manner provided in section 57-39.2-13 for sales tax liens.

**57-33.2-16. Corporate officer and limited liability company governor or manager liability.** If a corporation or limited liability company taxable under this chapter fails for any reason to file the required returns or pay the tax due, any of its officers, governors, or managers having control or supervision of, or charged with the responsibility for making, the returns and payments, are personally liable for the failure. The dissolution of a corporation or limited liability company does not discharge an officer's, a governor's, or a manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under this chapter for the assessment and collection of other liabilities.

**57-33.2-17. Bond.** The commissioner may require a sufficient bond from any company charged with making and filing reports and payment of taxes under this chapter. Any required bond must run to the state of North Dakota and be conditioned upon making and filing of reports as required by law or rule and for prompt payment of all taxes justly due to the state under this chapter.

**57-33.2-18. Deposit of revenue - Report to treasurer.** The commissioner shall transfer revenue collected under this chapter to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. With each transfer under this section, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue under section 57-33.2-19.

**57-33.2-19. Allocation - Continuing appropriation.** The electric generation, transmission, and distribution tax fund is appropriated as a continuing appropriation to the state treasurer for allocation and distribution to counties by April first of each year as provided in this section. The commissioner shall make the necessary allocations to the counties. The county auditors shall make the necessary allocations to the taxing districts.

1. Revenue from the tax on transmission lines under section 57-33.2-02 must be allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county for each size of transmission line under this subsection must be allocated one-third to the county and two-thirds among the county and other taxing districts in the county based on the mileage of that transmission line and the rates of tax that apply where that line is located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply where the transmission line is located.
2. Revenue from the distribution company tax under section 57-33.2-03 must be allocated fifty percent to the county in which the retail sale to which the tax applied was made and fifty percent among counties based on the mileage of the distribution company's distribution lines and the rate of tax on those lines within each county. Revenue received by the county under this subsection based on the location of retail sales must be allocated among taxing districts in the county based on the location of the retail sale and the most recent respective property tax levies in dollars within the taxing districts in which the retail sales occurred. Revenue received by a county under this subsection based on mileage

of distribution lines must be allocated among the county and other taxing districts in the county based on the mileage of that distribution line and the rates of tax that apply to the land on which that line is located within each taxing district. Revenue from that portion of a distribution line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply to the land on which the distribution line is located.

3. Revenue from the generation taxes under section 57-33.2-04 must be allocated to the county in which the generator is located. Revenue received by the county under this subsection must be allocated among taxing districts in which the generator is located in proportion to their respective most recent property tax mill rates that apply to the land on which the wind farm and associated collector system, wind generator, or other generation unit is located.
4. For purposes of this section, "taxing district" means the state, county, and that portion of any political subdivision with authority to levy property taxes which is located within the county.

**57-33.2-20. Penalty.** If any company refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the commissioner shall use the best facts and estimates available to determine the tax due. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of ten percent of the tax due for failure to make the required report which must be collected as a part of the tax, but the commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the commissioner may waive all or any part of the penalty that attached under this section.

**SECTION 7. AMENDMENT.** Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes.** Each coal conversion facility must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. ~~The taxes imposed by this chapter are also in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants.~~

**SECTION 8. REPEAL.** Chapters 57-33 and 57-33.1 of the North Dakota Century Code are repealed.

**SECTION 9. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2009.

Approved April 9, 2009  
Filed April 13, 2009

**CHAPTER 540****SENATE BILL NO. 2093**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-34-05 of the North Dakota Century Code, relating to the transfer to counties of telecommunications carriers tax fund revenues.

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

**SECTION 1. AMENDMENT.** Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation.** Gross receipts tax revenues of up to eight million four hundred thousand dollars under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars must be deposited in the state general fund. The tax commissioner shall allocate moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. The balance in the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars, is appropriated as a standing and continuing appropriation to the tax commissioner for annual allocation to counties under this section. If gross receipts tax revenues available for allocation on the first day of March of any year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund results in allocation of eight million four hundred thousand dollars to counties per calendar year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than ~~the tenth working day in~~ March thirty-first of each year.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 541

### HOUSE BILL NO. 1086

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subdivision g of subsection 2 of section 57-35.3-02, sections 57-38-30.5 and 57-38-32, subdivision c of subsection 1 of section 57-38-35.2, and section 57-38.1-17.1 of the North Dakota Century Code, relating to correction of statutory references for financial institution tax purposes, references to base period research expenses and the time period for claiming carryback for the research and experimental expenditure income tax credit, the corporate income tax return filing requirement, calculation of interest on refunds relating to the carryback of a tax credit, and the allocation of a gain or loss on the sale of a partnership interest; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision ~~and that portion of subdivision a that refers to subdivision g of subsection 4 of section 57-38-01.3.~~ However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05;

<sup>233</sup> **SECTION 2. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable

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<sup>233</sup> Section 57-38-30.5 was also amended by section 27 of House Bill No. 1324, chapter 545.

- year in excess of the base ~~period research expenses amount~~ and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
- b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - f. The maximum annual credit a taxpayer may obtain under this ~~section subsection~~ is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.

- a. This rate applies through the tenth taxable year beginning after December 31, 2006.
  - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
4. For purposes of this section:
- a. "Base ~~period research expenses amount~~" means base ~~period research expenses amount~~ as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.

6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
  - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
  - b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this

section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
  10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
  11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-29 or 57-38-30.3.

12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30.

**SECTION 3. AMENDMENT.** Section 57-38-32 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-32. Duty of corporations to make returns.** Each corporation that receives income from the sources designated in section ~~57-38-30~~ **57-38-14**, whether or not required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any corporation which is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made must contain or be verified by a written declaration that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

**SECTION 4. AMENDMENT.** Subdivision c of subsection 1 of section 57-38-35.2 of the North Dakota Century Code is amended and reenacted as follows:

- c. Interest on refunds arising from net operating loss carrybacks ~~or~~, capital loss carrybacks, or tax credit carrybacks accrues for payment from the due date of the return for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the ~~net operating loss or capital loss~~ carryback.

**SECTION 5. AMENDMENT.** Section 57-38.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-17.1. Gain or loss on the sale of a partnership.** Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original

cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. This section applies to the extent, that prior to the sale of the partnership interest, the partnership's income or loss constituted nonbusiness income.

**SECTION 6. EFFECTIVE DATE.** Section 2 of this Act is effective for tax credits earned after December 31, 2008. Section 4 is effective for amended returns filed after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 542****SENATE BILL NO. 2405**

(Senator Anderson)  
(Representatives Wall, Williams)

AN ACT to amend and reenact subdivision i of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to income tax treatment of the domestic reduction activities deduction for marketing cooperatives; and to provide an effective date.

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

<sup>234</sup> **SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

- i. ~~Increased~~ Except for a cooperative described in this subsection, increased by the amount of the deduction allowable under section 199 of the Internal Revenue Code [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal taxable income. For a cooperative that has elected to pass the deduction through to its patrons under section 199(d)(3), of the Internal Revenue Code [26 U.S.C. 199(d)(3)], the increase under this subsection does not include the amount passed through to its patrons.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years ending after April 30, 2009.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>234</sup> Section 57-38-01.3 was also amended by section 1 of House Bill No. 1392, chapter 543, and section 1 of Senate Bill No. 2089, chapter 544.

**CHAPTER 543****HOUSE BILL NO. 1392**

(Representative Belter)  
(Senator Cook)

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to an income tax deduction for actual distributions of an interest charge domestic international sales corporation without economic substance owned by individuals or passthrough entities; and to provide an effective date.

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

<sup>235</sup> **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Reduced, for an interest charge domestic international sales corporation without economic substance owned by individuals or passthrough entities, by the amount of actual or deemed distributions of the interest charge domestic international sales corporation to its owners. For purposes of this subsection, "without economic substance" means, in the case of an interest charge domestic international sales corporation subject to Internal Revenue Code section 992, that the interest charge domestic international sales corporation has elected to use intercompany pricing rules of Internal Revenue Code section 994, rather than the Internal Revenue Code section 482 method. For purposes of this subsection, a passthrough entity means an entity that for the applicable tax year is treated as an S corporation under this chapter or a cooperative, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>235</sup> Section 57-38-01.3 was also amended by section 1 of Senate Bill No. 2089, chapter 544, and section 1 of Senate Bill No. 2405, chapter 542.

**CHAPTER 544****SENATE BILL NO. 2089**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the add-back of dividends paid by captive real estate investment trusts for income tax purposes; to repeal sections 57-02-24 and 57-02-25 of the North Dakota Century Code, relating to elimination of obsolete provisions relating to listing and assessment of severed coal and mineral interests; and to provide an effective date.

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

<sup>236</sup> **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the dividends paid deduction otherwise allowed under section 857 of the Internal Revenue Code of 1986, as amended, if the real estate investment trust is a captive real estate investment trust.

(1) For purposes of this subdivision:

(a) "Captive real estate trust" means a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market, and more than fifty percent of the voting power or value of the beneficial interests or shares of the real estate investment trust are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

[1] Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

[2] Not exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as amended.

(b) "Listed Australian property trust" means an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia, and is regularly traded on an established securities market, or an entity organized

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<sup>236</sup> Section 57-38-01.3 was also amended by section 1 of House Bill No. 1392, chapter 543, and section 1 of Senate Bill No. 2405, chapter 542.

as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust.

(c) "Qualified foreign entity" means a corporation, trust, association, or partnership organized outside the laws of the United States, and which satisfies all of the following criteria:

[1] At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States government securities;

[2] The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity level taxation;

[3] The entity distributes at least eighty-five percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

[4] Not more than ten percent of the voting power or value in the entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

[5] The entity is organized in a country that has a tax treaty with the United States.

(d) "Real estate investment trust" has the meaning ascribed in section 856 of the Internal Revenue Code of 1986, as amended.

(2) For the purposes of applying subparagraph a of paragraph 1, the following entities are not considered an association taxable as a corporation:

(a) A real estate investment trust other than a captive real estate investment trust;

(b) A qualified real estate investment trust subsidiary under subsection i of section 856 of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

- (c) A listed Australian property trust; and
  - (d) A qualified foreign entity.
- (3) A real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of sections 856(a)(5), 856(a)(6), and 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this subdivision.
- (4) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first became a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part-year occurring during its initial year of status as a real estate investment trust. For purposes of this subdivision, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as a real estate investment trust under section 856(c)(1) of the Internal Revenue Code of 1986, as amended.
- (5) For purposes of this subdivision, the constructive ownership rules of section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by section 856(d)(5) of the Internal Revenue Code of 1986, as amended, apply in determining the ownership of stock, assets, or net profits of any person.

**SECTION 2. REPEAL.** Sections 57-02-24 and 57-02-25 of the North Dakota Century Code are repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 545****HOUSE BILL NO. 1324**

(Representatives Berg, Belter, Dosch, Weiler)  
(Senators Cook, Oehlke)

AN ACT to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, sections 57-38.5-03 and 57-38.6-03, and subsection 3 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return and allocation of oil and gas gross production tax revenues to political subdivisions; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide for legislative council studies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer under subsection 2 of section 57-38-67 who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the

value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3~~ or by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections 57-35.3-03, ~~57-38-20,~~ 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~4.~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2.~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's

individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus

3. c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

<sup>237</sup> **SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

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<sup>237</sup> Section 40-63-04 was also amended by section 3 of Senate Bill No. 2060, chapter 353.

**SECTION 7. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-63-06. Historic preservation and renovation tax credit.** A credit against state tax liability as determined under sections 57-35.3-03, ~~57-38-20~~, 57-38-30, and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

<sup>238</sup> **SECTION 8. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

4. A credit against state tax liability as determined under section 57-35.3-03, ~~57-38-20~~, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.

**SECTION 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate

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<sup>238</sup> Section 40-63-07 was also amended by section 2 of House Bill No. 1428, chapter 354, and section 98 of House Bill No. 1436, chapter 482.

amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.

- a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
- b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

<sup>239</sup> **SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

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<sup>239</sup> Section 57-38-01.8 was also amended by section 1 of Senate Bill No. 2033, chapter 546.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** Any A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29~~ or 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29~~ or 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~,

57-38-30; or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit

under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.

2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

<sup>240</sup> **SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>240</sup> Section 57-38-01.26 was also amended by section 1 of Senate Bill No. 2269, chapter 547.

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

<sup>241</sup> **SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

<sup>242</sup> **SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year

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<sup>241</sup> Section 57-38-01.29 was also amended by section 98 of House Bill No. 1436, chapter 482, and section 1 of House Bill No. 1448, chapter 548.

<sup>242</sup> Section 57-38-01.30 was also amended by section 98 of House Bill No. 1436, chapter 482.

and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.

- a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
- b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
- c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.** The gross income of individuals must be allocated and apportioned as follows:

1.
  - a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
  - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2.
  - a. Income received from personal or professional services performed by residents of this state, regardless of where such services are

performed, and income received by residents of this state from intangible personal property must be assigned to this state.

- b. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 4 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:
- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
  4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
  5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

6.
  - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
  - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
  - e. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:
    - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
    - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

This section applies to every income year beginning after December 31, 1956.

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection 6 ~~1~~ of section ~~57-38-04~~ 57-38-30.3.

<sup>243</sup> **SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

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<sup>243</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

## b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

## c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

## d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

## e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

## f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
  - h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
    - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
    - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
    - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
    - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal

Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.



Dakota sources less the amounts under subdivisions a and b of subsection 2.

- (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
  6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
  7. A taxpayer filing a return under this section is entitled to the following tax credits:
    - a. Family care tax credit under section 57-38-01.20.
    - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
    - c. Agricultural business investment tax credit under section 57-38.6-03.
    - d. Seed capital investment tax credit under section 57-38.5-03.
    - e. Planned gift tax credit under section 57-38-01.21.
    - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
    - g. Internship employment tax credit under section 57-38-01.24.
    - h. Workforce recruitment credit under section 57-38-01.25.
    - i. Angel fund investment tax credit under section 57-38-01.26.
    - j. Microbusiness tax credit under section 57-38-01.27.
    - k. Marriage penalty credit under section 57-38-01.28.
    - l. Homestead income tax credit under section 57-38-01.29.

- m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
- c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
- d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

<sup>244</sup> **SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one

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<sup>244</sup> Section 57-38-30.5 was also amended by section 2 of House Bill No. 1086, chapter 541.

- hundred thousand dollars in excess of the base period research expenses.
- f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  4. For purposes of this section:
    - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
    - b. "Director" means the director of the department of commerce division of economic development and finance.
    - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.

- d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
  6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
  7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
  8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
    - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
    - b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the

purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in

a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2~~ ~~of section 57-38-04~~ 1 or ~~subsection 4~~ of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This

subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section ~~57-38-29, 57-38-30, or 57-38-30.3.~~

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this

section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

<sup>245</sup> **SECTION 31. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

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<sup>245</sup> Section 57-51-15 was also amended by section 1 of House Bill No. 1304, chapter 575.

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

**SECTION 32. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, except section 31 of this Act, which is effective for taxable events occurring after June 30, 2009.

Approved May 19, 2009  
Filed May 19, 2009

**CHAPTER 546****SENATE BILL NO. 2033**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to an income tax credit for installation of geothermal, solar, wind, or biomass energy devices; and to provide an effective date.

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

<sup>246</sup> **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.8. Income tax credit for installation of geothermal, solar, wind, or biomass energy devices.**

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, ~~2014~~ 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
  - a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
  - b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
  - c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of

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<sup>246</sup> Section 57-38-01.8 was also amended by section 10 of House Bill No. 1324, chapter 545.

these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, wind, or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, wind, or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, wind, or biomass energy device is installed.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
6.
  - a. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.
  - b. Any excess tax credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be used as a credit carryover to each of the twenty succeeding taxable years.
  - c. For any tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011, the excess may be used as a credit carryover to each of the ten succeeding taxable years.
7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy

device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

- a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.
- c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.
- d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

- e. The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.
  - f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.
8. For geothermal, solar, wind, or biomass energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 547****SENATE BILL NO. 2269**

(Senators Grindberg, Holmberg)  
(Representatives Dosch, Froseth)

AN ACT to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to angel fund investment income tax credits; and to provide an effective date.

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

<sup>247</sup> **SECTION 1. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.**

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. ~~The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section.~~ The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential.

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<sup>247</sup> Section 57-38-01.26 was also amended by section 20 of House Bill No. 1324, chapter 545.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
4. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns more than forty-nine percent of the ownership interests in the enterprise.
5. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 548****HOUSE BILL NO. 1448**

(Representatives Drovdal, Belter, Froelich)  
(Senators Cook, Nodland, Triplett)

AN ACT to create and enact subsection 9 of section 57-38-01.29 of the North Dakota Century Code, relating to the homestead income tax credit for agricultural or commercial property; to provide an effective date; and to provide an expiration date.

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

<sup>248</sup> **SECTION 1.** Subsection 9 of section 57-38-01.29 of the North Dakota Century Code is created and enacted as follows:

9. a. For the first taxable year beginning after December 31, 2008, a person, trust, or estate is entitled to a credit against the tax imposed under section 57-38-29 or 57-39-30.3 in the amount of ten percent of the property tax paid by the taxpayer on agricultural or commercial property in this state for property tax years 2006 or 2007, or both. Agricultural or commercial property that was the basis for a credit received under subsection 1, 2, or 3 of this section by a person, estate, or trust in a previous income tax year may not be used to calculate the credit under this subsection. For purposes of this subsection, "property tax" does not include special assessments.
- b. The amount of the credit under this subsection may not exceed one thousand dollars for the 2006 or 2007 property tax that was paid for the agricultural or commercial property, with a maximum credit allowed under this subsection of two thousand dollars. The amount of the credit under this subsection may not exceed the taxpayer's tax liability and any unused credit may be carried forward for up to four tax years.
- c. A person, trust, or estate may not request a certificate for the credit allowed under this subsection.
- d. An estate, partnership, subchapter S corporation, limited liability company, or any other passthrough entity that owned and paid property tax on agricultural or commercial property described in this subsection must be considered the taxpayer for purposes of any credit limitation and the amount of the credit must be determined at the passthrough entity level. The amount of the credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

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<sup>248</sup> Section 57-38-01.29 was also amended by section 22 of House Bill No. 1324, chapter 545, and section 98 of House Bill No. 1436, chapter 482.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the 2009 tax year and is thereafter ineffective.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 549****SENATE BILL NO. 2388**

(Senators Schneider, Hogue)

(Representative DeKrey)

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for an employer maintaining payment of salary and related retirement plan contributions for an employee called to active military duty as a member of a reserve or national guard component; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Employer tax credit for salary and related retirement plan contributions for mobilized employees.**

1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
  - a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.
  - b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.
2. A partnership, subchapter S corporation, limited liability company treated like a passthrough entity, or any other similar passthrough entity that is an employer in this state must be considered to be a taxpayer for purposes of this section. The amount of the credit determined at the passthrough entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

<sup>249</sup> **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009

Filed April 9, 2009

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<sup>249</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, and section 5 of Senate Bill No. 2199, chapter 535.

**CHAPTER 550****HOUSE BILL NO. 1209**

(Representatives Porter, Kreidt, Schneider)  
(Senators Cook, J. Lee, Robinson)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a long-term care partnership plan individual income tax credit; to amend and reenact subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to a long-term care partnership plan individual income tax credit; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Credit for premiums for long-term care partnership plan insurance coverage.** A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. An individual who claims the credit under this section may not also claim the credit under section 57-38-29.2 for the same policy. For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
  - a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
  - b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
  - c. Has attained age seventy-six as of the date of purchase.

<sup>250</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
  - o. Long-term care partnership plan premiums income tax credit under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>250</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 551****HOUSE BILL NO. 1256**  
(Representative Headland)

AN ACT to amend and reenact subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax treatment of qualified dividend income; and to provide an effective date.

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

<sup>251</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008, for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain or qualified dividend is allocated to this state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>251</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 552****HOUSE BILL NO. 1277**

(Representatives Porter, S. Kelsh, Weiler)  
(Senators Cook, Triplett, Wardner)

AN ACT to create and enact a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to allowance of the income tax credit on the form ND-1 income tax return for installation of geothermal energy devices; and to provide an effective date.

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

<sup>252</sup> **SECTION 1.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Geothermal energy device installation credit under section 57-38-01.8.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, for geothermal energy devices installed after December 31, 2008.

Approved April 8, 2009

Filed April 9, 2009

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<sup>252</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 553****HOUSE BILL NO. 1489**

(Representatives Headland, Belter, Mueller)  
(Senators Dotzenrod, Miller, Wanzek)

AN ACT to amend and reenact section 57-38-30.6 of the North Dakota Century Code, relating to a corporate income tax credit for soybean and canola crushing facility equipment costs; to provide for a legislative council study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-30.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.6. Corporate income tax credit for biodiesel production or soybean and canola crushing facility equipment costs.** A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or ~~adapting~~ construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by volume or of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year ~~production or,~~ blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year ~~production or,~~ blending, or crushing begins.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - INCENTIVES FOR VALUE-ADDED AGRICULTURE.** During the 2009-10 interim, the legislative council shall consider studying the availability of tax incentives, grant programs, and any other direct or indirect public subsidization designed to encourage and promote value-added agriculture and any public and private benefits that accrue as a result of such availability. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 554****HOUSE BILL NO. 1088**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsections 1 and 5 of section 57-38-57 and subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the confidentiality of income tax and sales and use tax returns and return information.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 57-38-57 of the North Dakota Century Code are amended and reenacted as follows:

1. a. Except ~~when otherwise directed by judicial order, or~~ as otherwise specifically provided by law, the tax commissioner, the tax commissioner's deputies, agents, clerks, and other officers and employees, may not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the disclosure is made to further a tax investigation being conducted by the tax commissioner. Reports and returns must be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.
- b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
  - (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;



- (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
- (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.
- c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.
- d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 555****HOUSE BILL NO. 1199**

(Representatives DeKrey, Dahl, R. Kelsch, Schneider)  
(Senators Holmberg, Klein)

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to setoff of income tax refund for debts owed to any fund or program administered by the insurance commissioner; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 556****SENATE BILL NO. 2325**

(Senator Cook)

(Representatives Drovdal, Weiler)

AN ACT to create and enact three new subsections to section 57-39.2-01, subsection 9 to section 57-39.4-06, sections 57-39.4-11.1 and 57-39.4-14.1, subsection 4 to section 57-39.4-32, and sections 57-39.4-33.1 and 57-39.4-33.2 of the North Dakota Century Code, relating to the streamlined sales tax agreement; to amend and reenact subsection 1 of section 57-39.2-02.1, subsection 2 of section 57-39.2-04, subdivision a of subsection 26 of section 57-39.2-04, subdivision c of subsection 3 of section 57-39.2-04.1, section 57-39.4-05, subdivision d of subsection 2 of section 57-39.4-10, subsection 1 of section 57-39.4-11, subsection 4 of section 57-39.4-22, section 57-39.4-23, subsection 3 of section 57-39.4-28, sections 57-39.4-29 and 57-39.4-35, subsection 1 of section 57-40.2-01, subdivision a of subsection 12 of section 57-40.2-04, and subdivision c of subsection 3 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the streamlined sales and use tax agreement; and to provide an effective date.

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

<sup>253</sup> **SECTION 1.** Three new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Computer software maintenance contract" is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both.

"Mandatory computer software maintenance contract" is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

"Optional computer software maintenance contract" is a computer software maintenance contract that the customer is not obligated to purchase as a condition to the retail sale of computer software.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as

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<sup>253</sup> Section 57-39.2-01 was also amended by section 1 of House Bill No. 1289, chapter 557, and section 1 of Senate Bill No. 2040, chapter 558.

otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

- h. A mandatory computer software maintenance contract for prewritten computer software.
- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

<sup>254</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier ~~and title to the transported tangible personal property has passed from the seller to the purchaser.~~

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<sup>254</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

<sup>255</sup> **SECTION 4. AMENDMENT.** Subdivision a of subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
- (1) Can withstand repeated use;
  - (2) Is primarily and customarily used to serve a medical purpose;
  - (3) Generally is not useful to a person in the absence of illness or injury; and
  - (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

**SECTION 5. AMENDMENT.** Subdivision c of subsection 3 of section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided ~~to~~ by the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.

**SECTION 6. AMENDMENT.** Section 57-39.4-05 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>255</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**57-39.4-05. (304) Notice for state tax changes.**

1. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
  - a. Provide sellers with as much advance notice as practicable of a rate change.
  - b. Limit the effective date of a rate change to the first day of a calendar quarter.
  - c. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.
2. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.
3. Each member state failing to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new effective rate if:
  - a. The seller collected tax at the immediately preceding effective rate; and
  - b. The seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.
4. Notwithstanding subsection 3, if the member state establishes that the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate, this relief does not apply.
5. Member states may provide for relief of liability for failing to collect tax as a result of a tax change beyond the liability relief required by subsection 3.

**SECTION 7.** Subsection 9 to section 57-39.4-06 of the North Dakota Century Code is created and enacted as follows:

9. Make databases provided under subsections 5, 6, 7, and 8 available to a seller, or certified service provider by the first day of the month prior to the first day of a calendar quarter. Databases must be in a format approved by the governing board and available on each state's website or other location determined by the governing board.

**SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~Until December 31, 2009, florist~~ Florist sales as defined by each member state. ~~Prior to this date, these items~~ These sales must be sourced according to the requirements of each member state.

**SECTION 9. AMENDMENT.** Subsection 1 of section 57-39.4-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~The~~ Except as provided in section 57-39.4-11.1, a retail sale, excluding lease or rental, of a product shall be sourced as follows:
  - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
  - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
  - c. When subdivisions a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
  - d. When subdivisions a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
  - e. When none of the previous rules of subdivisions a, b, c, and d apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

**SECTION 10.** Section 57-39.4-11.1 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-11.1. (310.1) Election for origin-based sourcing.**

1. A state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods under the provisions of this section in lieu of the provisions of subdivisions b, c, and d of subsection 1 of section 57-39.4-11 if the state complies with subsection 3 of this section and the only exception to section 57-39.4-11 is in subsection 2 of this section.
2. A state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:



order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped must not be used in determining the location where the order is received by the seller.

- f. A state must provide for direct pay permits under section 57-39.4-27 and the requirements of this subsection. Purchasers that remit sales and use tax under a direct pay permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A state may establish reasonable thresholds at which the state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and nontaxable purchases. The state shall establish a process for application for a direct pay permit as provided in this chapter. The state may require the direct pay permit applicant to demonstrate:
- (1) An ability to comply with the sales and use tax laws of the state;
  - (2) A business purpose for seeking a direct pay permit and how the permit will benefit tax compliance; and
  - (3) Proof of good standing under the tax laws of the state. The state shall review all permit applications in a timely manner. Notification of authorization or denial must be received by applicants within one hundred twenty days of application. The state may not limit direct pay permit applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
- g. When taxable services are sold with tangible personal property or digital products under a single contract or in the same transaction, are billed on the same billing statement, and because of the application of this section, would be sourced to different jurisdictions, a state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. The state election is required until the governing board adopts a uniform methodology to address these sales.
- h. A state that elects to source the sale of tangible personal property and digital goods under the provisions of this section shall inform the governing board of the election.
4. Compliance with the provisions of this section satisfies a state's eligibility for membership in this agreement as follows:
- a. If a state is in substantial compliance with the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in section 57-39.4-11, and elects to source sales of tangible personal property and digital goods under this section, the state may become an associate

member state in the same manner as provided for states to become full member states under article VIII of the agreement.

- b. On or after January 1, 2010, a state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and has been found to be in substantial compliance with the provisions of this section.
- c. This section shall be fully effective for all purposes on or after January 1, 2010, provided at least five states which are not full member states on December 31, 2007, have been found to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11 and have notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.

**SECTION 11.** Section 57-39.4-14.1 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.**

1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state under this section.
2. If the purchaser provides the seller with a direct pay permit or an exemption certificate claiming direct mail, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. An exemption certificate claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
3. Except as provided in subsection 2 and this subsection, the seller shall collect the tax according to subsection 1 of section 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 57-39.4-14.
4. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection 3 shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.

5. A member state that elects to source the sale of direct mail under the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.

**SECTION 12. AMENDMENT.** Subsection 4 of section 57-39.4-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The governing board may certify a certified service provider only if that certified service provider certifies that:
  - a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
  - b. ~~That personally~~ Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers and for proper identification of taxing jurisdictions;
  - c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
  - d. ~~Its~~ The collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions; and
  - e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

**SECTION 13. AMENDMENT.** Section 57-39.4-23 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-23. (322) Sales tax holidays.**

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
  - a. Not apply an exemption ~~after December 31, 2003,~~ unless the items to be exempted are specifically defined in the agreement part II or part III(B) of the library of definitions and the exemptions are uniformly applied to state and local sales and use taxes.
  - b. Provide notice of the exemption period at least sixty days prior to the first day of the calendar quarter in which the exemption period will begin.



- b. Bundled sales. Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.
- c. Discounts and coupons. A discount by a seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller shall allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.
- d. Splitting of items normally sold together. Items that are normally sold as a single unit must continue to be sold in that manner and cannot be priced separately and sold as individual items in order to obtain a sales tax holiday.
- e. Rainchecks. A raincheck is a means to allow a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that is purchased during the exemption period with use of a raincheck qualifies for the exemption regardless of when the raincheck was issued. Issuance of a raincheck during the exemption period does not qualify eligible property for the exemption if the property is purchased after the exemption period.
- f. Exchanges. The procedure for an exchange of eligible property purchased during a sales tax holiday is as follows:

  - (1) If a customer purchases an item of eligible property during the exemption period, and later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due if the exchange is made after the exemption period.
  - (2) If a customer purchases an item of eligible property during the exemption period, and returns the item and receives credit on the purchase of a different item after the exemption period, the appropriate sales tax is due on the sale of the newly purchased item.
  - (3) If a customer purchases an item of eligible property before the exemption period, returns the item, and receives credit on the purchase of a different item of eligible property during the exemption period, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.
- g. Delivery charges. Delivery charges, including shipping, handling, and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price

threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, the seller does not have to allocate the delivery charge to determine if the price threshold is exceeded and the shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using:

- (1) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
  - (2) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller must tax the percentage of the delivery charge allocated to the taxable property but is not required to tax the percentage allocated to the eligible property.
- h. Order date and back orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption if:
- (1) The item is both delivered to and paid for by the customer during the exemption period; or
  - (2) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. For purposes of this subsection, the seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to or on back order by the seller.
- i. Returns. For a sixty-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty day period is solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The sixty-day period does not require the seller to change the seller's policy on the time period during which the seller will accept returns.
- j. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

**SECTION 14. AMENDMENT.** Subsection 3 of section 57-39.4-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as specifically provided in ~~section 57-39.4-15~~ sections 57-39.4-17 and 57-39.4-33.1, and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each part II or part III(B) definition or exempt from sales or use tax all products or services within each definition. The requirements of this section shall only apply to part III(B) definitions to the extent such definitions are used in the administration of a sales tax holiday.

**SECTION 15. AMENDMENT.** Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-29. (328) Taxability matrix.**

1. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions, each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
2. A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix.
3. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability matrix.
4. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the taxability matrix of the products for which a tax exemption is provided.

**SECTION 16.** Subsection 4 to section 57-39.4-32 of the North Dakota Century Code is created and enacted as follows:

4. In the case of a transaction that includes an "optional computer software maintenance contract" for prewritten computer software and the state otherwise has not specifically imposed tax on the retail sale of computer software maintenance contracts, the following provisions apply:
  - a. If an optional computer software maintenance contract only obligates the vendor to provide upgrades and updates, it will be characterized as a sale of prewritten computer software.
  - b. If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a sale of services.

- c. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, the contract shall be characterized as all taxable.

**SECTION 17.** Section 57-39.4-33.1 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-33.1. (332) Specified digital products.**

1. A member state shall not include "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" within its definition of "ancillary services", "computer software", "telecommunication services", or "tangible personal property". This restriction applies whether the "specified digital product" is sold to a purchaser who is an end user or to a purchaser with less than the right of permanent use granted by the seller, or use by the purchaser which is conditioned upon continued payment from the purchaser. Until January 1, 2010, the exclusion of "specified digital products" from the definition of "tangible personal property" does not affect the classification of products transferred electronically that are not included within the definition of "specified digital products" as being included in, or excluded from, the definition of "tangible personal property".
2. For purposes of subsection 3 of section 57-39.4-28 and the taxability matrix, "digital audiovisual works", "digital audio works", and "digital books" are separate definitions.
3. If a state imposes a sales or use tax on products transferred electronically separately from its imposition of tax on "tangible personal property", the state will not be required to use the terms "specified digital product", "digital audiovisual works", "digital audio works", or "digital books", or enact an additional or separate sales or use tax on any "specified digital product".
4. For purposes of the agreement:
  - a. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, a tax on any other product transferred electronically must be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes and separately enumerates the tax on a sale to a purchaser who is not an end user. For purposes of this section, an "end user" includes any person other than a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons. A person who purchases products transferred electronically, or the code for specified digital products for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such products or code and shall be treated as an end user.

- b. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, on any other product transferred electronically must be construed as only imposing tax on a sale with the right of permanent use granted by the seller unless the statute specifically imposes and separately enumerates the tax on a sale with the right of less than permanent use granted by the seller. For purposes of this section "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use shall be presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.
- c. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, on any other product transferred electronically shall be construed as only imposing tax on a sale which is not conditioned upon continued payment from the purchaser unless the statute specifically imposes and separately enumerates the tax on a sale which is conditioned upon continued payment from the purchaser.
- d. A member state which imposes a sales or use tax on the sale of a product transferred electronically to a person other than the end user or on a sale with the right of less than permanent use granted by the seller or which is conditioned upon continued payment from the purchaser shall so indicate in its taxability matrix in a format approved by the governing board.
- 5. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of "specified digital products".
- 6. A state may treat a subscription to products transferred electronically differently than a nonsubscription purchase of such product. For purposes of this section, "subscription" means an agreement with a seller that grants a consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.
- 7. The tax treatment of a "digital code" shall be the same as the tax treatment of the "specified digital product" or product transferred electronically to which the "digital code" relates. The retail sale of the "digital code" shall be considered the transaction for purposes of the agreement. For purposes of this section, "digital code" means a code, which provides a purchaser with a right to obtain one or more such products having the same tax treatment. A "digital code" may be obtained by any means, including e-mail or by tangible means regardless of its designation as "song code", "video code", or "book code".

8. Notwithstanding the provisions of section 57-39.4-17, a member state may provide a product-based exemption for specific items within the definition of "specified digital products", provided the items which are not transferred electronically must also be granted a product-based exemption by the member state.
9. For purposes of this section and section 57-39.4-33.2, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

**SECTION 18.** Section 57-39.4-33.2 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-33.2. (333) Use of specified digital products.** A member state shall not include any product transferred electronically in its definition of "tangible personal property". "Ancillary services", "computer software", and "telecommunication services" are excluded from the phrase "products transferred electronically".

**SECTION 19. AMENDMENT.** Section 57-39.4-35 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-35. (502) State review and approval of certified automated system software and certain liability relief.**

1. Each member state shall review software submitted to the governing board for certification as a certified automated system as provided for in this chapter. Such review shall include a review to determine that the program adequately classifies the state's product-based exemptions accurately reflects the taxability of the product categories included in the program. Upon completion of the review approval by the state, the state shall certify to the governing board its acceptance of the classifications made by the system determination of the taxability of the product categories included in the program.
2. Each member state shall relieve certified service providers and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the certified service provider or model 2 seller relying on the certification provided by the member state.
3. Each member state shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 57-39.4-18.
4. The governing board and the member states shall not be responsible for classification of an item or transaction within the product-based exemptions product categories certified. The relief from liability provided in this section shall not be available for a certified service provider or model 2 seller that has incorrectly classified an item or transaction into a product-based exemption product category certified by a member state. This subsection shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

5. A If a member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten days, the certified service provider or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

**SECTION 20. AMENDMENT.** Subsection 1 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Business", "certified automated system", "certified service provider", "commissioner", "computer software contract", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "mandatory computer software maintenance contract", "optional computer software maintenance contract", "person", "relief agency", "retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.

<sup>256</sup> **SECTION 21. AMENDMENT.** Subdivision a of subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
  - (1) Can withstand repeated use;
  - (2) Is primarily and customarily used to serve a medical purpose;
  - (3) Generally is not useful to a person in the absence of illness or injury; and
  - (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

**SECTION 22. AMENDMENT.** Subdivision c of subsection 3 of section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>256</sup> Section 57-40.2-04 was also amended by section 2 of Senate Bill No. 2347, chapter 563.

- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided ~~to~~ by the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.

**SECTION 23. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 557****HOUSE BILL NO. 1289**  
(Representatives DeKrey, Onstad)  
(Senators Taylor, Wanzek)

AN ACT to create and enact a new subsection to section 57-39.2-01 of the North Dakota Century Code, relating to definition of irrigation equipment repair parts; to amend and reenact subsection 45 of section 57-39.2-04 and section 57-39.5-02 of the North Dakota Century Code, relating to an exemption from sales, use, and farm machinery gross receipts taxes for sales of irrigation equipment repair parts used exclusively for agricultural purposes; and to provide an effective date.

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

<sup>257</sup> **SECTION 1.** A new subsection to section 57-39.2-01 of the North Dakota Century Code is created and enacted as follows:

"Irrigation equipment repair parts" means repair or replacement parts for irrigation equipment which have a specific or generic part number assigned by the manufacturer of the irrigation equipment. The term does not include tires, fluid, gas, grease, lubricant, wax, or paint.

<sup>258</sup> **SECTION 2. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

45. Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, ~~or irrigation equipment,~~ or irrigation equipment repair parts used exclusively for agricultural purposes.

**SECTION 3. AMENDMENT.** Section 57-39.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.5-02. Imposition - Exemptions.** There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this

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<sup>257</sup> Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2040, chapter 558, and section 1 of Senate Bill No. 2325, chapter 556.

<sup>258</sup> Section 57-39.2-04 was also amended by section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, ~~or~~ used irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of this section, "used" means:

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Originally purchased outside this state and previously owned by a farmer; or
3. Has been under lease or rental for three years or more.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 558****SENATE BILL NO. 2040**

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to create and enact two new subsections to section 57-39.2-01 and a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of telecommunications company and telecommunications service and to a sales and use tax exemption for equipment used in telecommunications infrastructure development; and to provide an expiration date.

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

<sup>259</sup> **SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. The term does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;

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<sup>259</sup> Section 57-39.2-01 was also amended by section 1 of House Bill No. 1289, chapter 557, and section 1 of Senate Bill No. 2325, chapter 556.

- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. Ancillary services; or
- i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones.

**SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales tax exemption for equipment used in telecommunications infrastructure development.**

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, a telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the telecommunications company must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2011, and after that date is ineffective.

Approved April 23, 2009  
Filed April 23, 2009

## CHAPTER 559

### HOUSE BILL NO. 1082 (Finance and Taxation Committee) (At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-39.2-03.3, subsection 1 of section 57-40.3-01, subsection 4 of section 57-40.3-11, subsections 12, 13, 16, and 18 of section 57-43.1-01, subsection 2 of section 57-43.1-02, section 57-43.1-05, subsections 16, 17, and 20 of section 57-43.2-01, and subsection 2 of section 57-43.2-02 of the North Dakota Century Code, relating to sales tax on sales through vending machines, the definition of low-speed vehicle and the time for audit and protest for motor vehicle excise tax purposes, motor vehicle fuel tax definitions, the motor vehicle fuel tax and special fuels tax imposed on fuels produced by a refiner, and minimum refunds for motor vehicle fuel tax purposes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 57-39.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-03.3. Sales tax on sales through vending machines.** ~~Beginning July 1, 1969, gross~~ Gross receipts from the sale of tangible personal property costing sixteen cents or more sold through a coin-operated vending machine are subject to the sales tax imposed by chapter 57-39.2, and gross receipts from the sale of tangible personal property costing fifteen cents or less sold through a coin-operated vending machine are specifically exempted from the provisions of this chapter.

<sup>260</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of more than twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers] and may not exceed one three thousand five hundred pounds [680.39 1360.77 kilograms] in ~~unloaded~~ weight when fully loaded with passengers and any cargo.

**SECTION 3. AMENDMENT.** Subsection 4 of section 57-40.3-11 of the North Dakota Century Code is amended and reenacted as follows:

4. If upon audit the tax commissioner determines that a motor vehicle excise tax has not been paid or an additional tax is due, the tax commissioner shall give notice of determination of the tax due to the person liable for the tax. The notice of determination must be given no later than three years from the date the motor vehicle was purchased,

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<sup>260</sup> Section 57-40.3-01 was also amended by section 1 of House Bill No. 1131, chapter 567, and section 1 of Senate Bill No. 2184, chapter 568.

acquired, or the date the vehicle was required to be titled or registered with the director of the department of transportation, whichever is later. If it is determined that the motor vehicle excise tax due is twenty-five percent or more above the amount that had been paid, the notice of determination must be given no later than six years from the date the motor vehicle was purchased, acquired, or the date the vehicle was required to be titled or registered with the director of the department of transportation, whichever is later. The notice of determination of tax due fixes the tax finally and irrevocably unless within ~~fifteen~~ thirty days of the date of the notice the person against whom the tax is assessed applies to the tax commissioner for a hearing under chapter 28-32 or unless the tax commissioner reduces the liability relating to assessments on the tax commissioner's own motion. The provisions of chapter 57-39.2 not in conflict with the provisions of this chapter govern the administration of the tax levied in this chapter.

**SECTION 4. AMENDMENT.** Subsections 12, 13, 16, and 18 of section 57-43.1-01 of the North Dakota Century Code are amended and reenacted as follows:

12. "Import" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, ~~or~~ distributor, or consumer.
13. "Importer" means a refiner, supplier, ~~or~~ distributor, or consumer who imports motor vehicle fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
16. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
18. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel or fuel used as a component of or additive to another product when the use is not intended to result in combustion. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.

**SECTION 5. AMENDMENT.** Subsection 2 of section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. A refiner, supplier, or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.

**SECTION 6. AMENDMENT.** Section 57-43.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-05. Claim for refund - Limitation on filing.** ~~A~~ For all motor vehicle fuel purchases during a calendar year, a refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds four hundred dollars.

No claim for refund may be made or approved unless the amount of the claim is ~~in excess of~~ at least five dollars.

**SECTION 7. AMENDMENT.** Subsections 16, 17, and 20 of section 57-43.2-01 of the North Dakota Century Code are amended and reenacted as follows:

16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, ~~or distributor, or consumer.~~
17. "Importer" means a refiner, supplier, ~~or distributor, or consumer~~ who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
20. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

**SECTION 8. AMENDMENT.** Subsection 2 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. A refiner, supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.

**SECTION 9. EFFECTIVE DATE.** Section 3 of this Act is effective for assessments of motor vehicle excise tax issued after June 30, 2009. Sections 4, 5, 7, and 8 of this Act are effective for taxable periods beginning after June 30, 2009. Section 6 of this Act is effective for refund claims made after June 30, 2009.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 560****SENATE BILL NO. 2053**  
(Legislative Council)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact subsection 6 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases by an Indian tribe; and to provide an effective date.

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

<sup>261</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 57-39.2-04 of the North Dakota Century Code, as effective after June 30, 2009, is amended and reenacted as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States, an Indian tribe, or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and the certificate must be presented to each retailer whenever this exemption is claimed. For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>261</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**CHAPTER 561****SENATE BILL NO. 2090**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 12 of section 57-39.2-04 of the North Dakota Century Code, relating to sales and use tax imposed on purchases made in North Dakota by persons from an adjoining state; and to declare an emergency.

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

<sup>262</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12. Gross receipts from a sale otherwise taxable under this chapter made to a person ~~who is a resident of~~ from an adjoining state which does not impose or levy a retail sales tax under the following conditions:
  - a. The ~~nonresident~~ person is in the state of North Dakota for the express purpose of making a purchase ~~and not as a tourist~~.
  - b. The ~~nonresident~~ person furnishes to the North Dakota retailer a certificate signed by the ~~nonresident~~ person in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the ~~nonresident~~ person was not in the state of North Dakota for the express purpose of making a purchase.
  - c. The sale is fifty dollars or more.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>262</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**CHAPTER 562****SENATE BILL NO. 2035**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 41 of section 57-39.2-04, subsection 1 of section 57-39.2-04.2, subsection 1 of section 57-40.2-04.2, and section 57-61-01.4 of the North Dakota Century Code, relating to sales and use tax exemptions for beneficiated coal and equipment for certain power plants and a coal severance tax exemption for beneficiated coal or beneficiated coal used to produce steam that is used in certain plants; to provide for a study and a report to the legislative council; to provide an effective date; and to provide an expiration date.

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

<sup>263</sup> **SECTION 1. AMENDMENT.** Subsection 41 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

41. Gross receipts from the initial sale of beneficiated coal ~~taxed under chapter 57-60.~~

<sup>264</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

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<sup>263</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

<sup>264</sup> Section 57-39.2-04.2 was also amended by section 1 of Senate Bill No. 2032, chapter 564.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
  - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
- e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal ~~from~~ in its natural form or beneficiated coal into electrical power.

<sup>265</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

- 1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.

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<sup>265</sup> Section 57-40.2-04.2 was also amended by section 2 of Senate Bill No. 2032, chapter 564.

- (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
- (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
- e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal ~~from~~ in its natural form or beneficiated coal into electric power.

**SECTION 4. AMENDMENT.** Section 57-61-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**57-61-01.4. Severance and sales and use tax exemptions for coal used in certain plants.** No state severance tax may be imposed on coal used in, or coal used to produce steam that is used in, agricultural commodity processing or sugar beet refining plants facilities as defined in subsection 4 of section 57-39.2-04.4 located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. No state severance tax may be imposed on coal purchased for improvement through the process of coal beneficiation defined in subsection 2 of section 57-60-01 which is subsequently used in, or used to produce

steam that is used in, agricultural commodity processing facilities located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal to certify that amount of coal purchased for use in agricultural commodity processing or sugar beet refining purposes. Coal exempted from the severance tax by this section is not subject to sales and use taxes facilities or for beneficiation and subsequent use in agricultural commodity processing facilities or any facility owned by the state or a political subdivision of the state or to produce steam that is used in any of those facilities.

**SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.**

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to an interim committee designated by the legislative council during the 2013-14 interim.
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer.

**SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1 through 4 of this Act are effective for taxable events occurring after June 30, 2009, and before July 1, 2015, and are thereafter ineffective.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 563****SENATE BILL NO. 2347**

(Senator Cook)

(Representatives Drovdal, Weiler)

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to gross receipts from the sale of items delivered electronically; and to provide an effective date.

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

<sup>266</sup> **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:

- a. "Specified digital products" means:
  - (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
  - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
  - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
- b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
- c. For purposes of the definition of "digital audio work", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.

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<sup>266</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, and section 4 of Senate Bill No. 2325, chapter 556.

- d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

<sup>267</sup> **SECTION 2.** A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:

- a. "Specified digital products" means:
- (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
  - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
  - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
- b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
- c. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.
- d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

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<sup>267</sup> Section 57-40.2-04 was also amended by section 21 of Senate Bill No. 2325, chapter 556.

**CHAPTER 564****SENATE BILL NO. 2032**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsections 1 and 3 of section 57-39.2-04.2 and subsections 1 and 3 of section 57-40.2-04.2 of the North Dakota Century Code, relating to the exemption from sales and use tax for materials used in the construction or expansion of a wind-powered facility; and to provide an effective date.

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

<sup>268</sup> **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 57-39.2-04.2 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, ~~2014~~ 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single

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<sup>268</sup> Section 57-39.2-04.2 was also amended by section 2 of Senate Bill No. 2035, chapter 562.

electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal from its natural form into electrical power.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.

<sup>269</sup> **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 57-40.2-04.2 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

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<sup>269</sup> Section 57-40.2-04.2 was also amended by section 3 of Senate Bill No. 2035, chapter 562.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, ~~2014~~ 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal from its natural form into electric power.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 565****SENATE BILL NO. 2037**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-39.2-04.5 of the North Dakota Century Code, relating to a sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas.**

1. Gross receipts from sales of tangible personal property used in compressing, processing, gathering, or refining of to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state are exempt from taxes under this chapter 57-39.2. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, or refining system must receive from the tax commissioner a certificate that the tangible personal property used qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. The If the tangible personal property is purchased and installed by a contractor subject to the tax imposed by this chapter, the owner of the tangible personal property gas compressing, processing, gathering, or refining system must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
3. All of the provisions of chapter 57-39.2 and 57-40.2 apply to the exemption under this section.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 566****HOUSE BILL NO. 1083**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 of the North Dakota Century Code, relating to the due date for sales tax returns in odd-numbered years; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month; ~~except tax collected during May in each odd-numbered year is payable on or before the twenty-second day of June of that year.~~ The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 567****HOUSE BILL NO. 1131**

(Transportation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 and subsection 1 of section 57-40.3-02.1 of the North Dakota Century Code, relating to the motor vehicle excise tax definition of purchase price of a motor vehicle and the tax imposed on motor vehicle leases with nominal consideration; and to provide an effective date.

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

<sup>270</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss ~~but not to exceed the total amount of motor vehicle excise tax paid.~~ For a leased vehicle that is stolen or totally destroyed, the credit may not exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company within three years from the date of issuance verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a

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<sup>270</sup> Section 57-40.3-01 was also amended by section 2 of House Bill No. 1082, chapter 559, and section 1 of Senate Bill No. 2184, chapter 568.

new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.3-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, all receipts due or consideration given or contracted to be given at the initiation of the lease and for the entire period of the lease, option to renew, or similar provision, or combination thereof, are deemed to have been paid or given and are subject to tax. Any tax due must be collected as provided in section 57-40.3-12 as of the date of first payment under the lease, option to renew, or similar provision, or combination thereof, or as of the date of registration under chapter 39-05. Lease consideration, when all or part of the lease is a gift or other agreement for nominal value, also includes the average value of similar motor vehicle leases established by standards and guides as determined by the director of the department of transportation.

**SECTION 3. EFFECTIVE DATE.** Section 2 of this Act is effective for motor vehicle leases or options to renew occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 568****SENATE BILL NO. 2184**

(Senators Olafson, Krauter)  
(Representatives Belter, D. Johnson, Kaldor, Vigesaa)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to exclusion of motor vehicle manufacturers' incentives or discounts from motor vehicle excise taxes; and to provide an effective date.

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

<sup>271</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; ~~provided, however, that when~~. The purchase price excludes the amount of a manufacturer's incentive or discount that reduces the amount paid by the purchaser to the seller at the time of purchase. If a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company within three years from the date of issuance verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of

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<sup>271</sup> Section 57-40.3-01 was also amended by section 2 of House Bill No. 1082, chapter 559, and section 1 of House Bill No. 1131, chapter 567.

renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 569****HOUSE BILL NO. 1412**

(Representatives Brandenburg, J. Kelsh, Kretschmar, Vigesaa)  
(Senators Erbele, Taylor)

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to the fee imposed for emergency services communications; to provide for a legislative council study; and to provide an expiration date.

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

<sup>272</sup> **SECTION 1. AMENDMENT.** Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-02. Authority of counties or cities to impose fee on assessed communications service - Procedure.** The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation,

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<sup>272</sup> Section 57-40.6-02 was also amended by section 30 of Senate Bill No. 2324, chapter 180.

the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.

4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.
5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and remains in effect until changed under this section.
8. Political subdivisions within an intrastate multicounty public safety answering point may exceed the maximum fee of one dollar to an amount not to exceed one dollar and fifty cents. The governing body of the political subdivision may increase the fee by resolution subject to a vote in that political subdivision at the next general election.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - EMERGENCY SERVICES COMMUNICATION.** During the 2009-10 interim, the legislative council shall consider studying the equity of the 911 fee structure, including consideration of fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2012, and after that date is ineffective.

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 570

### HOUSE BILL NO. 1135 (Political Subdivisions Committee) (At the request of the Adjutant General)

AN ACT to amend and reenact section 57-40.6-12 of the North Dakota Century Code, relating to membership of the emergency services communications coordinating committee.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>273</sup> **SECTION 1. AMENDMENT.** Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-40.6-12. Emergency services communications coordinating committee - Membership - Duties.**

1. The governing body of a city or county, which adopted a fee on assessed communications services under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the emergency services communications coordinating committee. The committee is composed of ~~three~~ four members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, one appointed by the chief information officer of the state, and one appointed by the adjutant general to represent the division of state radio.
2. The committee shall:
  - a. Recommend to the legislative council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers;
  - b. Develop guidelines regarding the allowable uses of the fee revenue collected under this chapter;
  - c. Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed under this chapter, analyze the reports with respect to the guidelines, file its report with the legislative council by November first of each even-numbered year regarding the use of the fee revenue, and recommend to the legislative assembly the appropriate maximum fee allowed by section 57-40.6-02; ~~and~~

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<sup>273</sup> Section 57-40.6-12 was also amended by section 92 of House Bill No. 1436, chapter 482.

- d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative council; and
  - e. Serve as the governmental body to coordinate plans for implementing emergency 911 services and internet protocol enabled emergency applications for 911.
3. The committee may initiate and administer statewide agreements among the governing bodies of the local governmental units with jurisdiction over an emergency 911 telephone system to coordinate the procurement of equipment and services, fund the research, administration, and activities of the committee, and contract for the necessary staff support for committee activities.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 571****SENATE BILL NO. 2375**

(Senators Stenehjelm, Klein, Triplett)  
(Representatives Berg, Boe, Porter)

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to use of dyed special fuels by cities.

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

**SECTION 1.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Dyed special fuel use by a city.** A city that has computerized fuel dispensing equipment that allows tracking of fuel usage by its vehicles shall report to the tax commissioner, on a form prescribed by the commissioner, the highway and nonhighway use of dyed special fuels dispensed through that equipment. The city shall pay taxes under this chapter appropriate for that usage.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 572****SENATE BILL NO. 2224**

(Senators Olafson, Miller, Triplett)  
(Representatives Ruby, Schmidt, Weiler)

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to refund of special fuels taxes on fuels used for a refrigeration unit on a truck; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Refund of tax for fuel used for a refrigeration unit on a truck.** A consumer who buys or uses any special fuel for a refrigeration unit that has a separate supply tank on a truck or trailer on which the special fuels tax imposed under section 57-43.2-02 has been paid may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009  
Filed April 23, 2009

**CHAPTER 573****SENATE BILL NO. 2338**

(Senators Nething, Seymour, Wardner)  
(Representatives Gruchalla, Kempenich, Weiler)

AN ACT to amend and reenact section 57-43.2-19 of the North Dakota Century Code, relating to deposit of special fuels excise taxes paid by railroads in a special fund; to provide an appropriation; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 57-43.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-19. Transfer, deposit, and distribution of funds.** All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in a highway tax distribution fund, except all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.2-03 of up to one million six hundred thousand dollars per biennium must be transferred to the state treasurer who shall deposit the moneys in the highway-rail grade crossing safety projects fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the highway-rail grade crossing safety projects fund in the state treasury, not otherwise appropriated, the sum of \$1,600,000, or so much of the sum as may be necessary, and from federal highway traffic safety funds, the sum of \$900,000, or so much of the sum as may be necessary, to the department of transportation for funding of grants for highway-rail grade crossing safety projects, including grants for reduction of associated special assessments, in this state, for the biennium beginning July 1, 2009, and ending June 30, 2011. By August 1, 2011, the state treasurer shall transfer any unexpended and unobligated balance in the highway-rail grade safety projects fund to the highway tax distribution fund.

Grants under this section by the department of transportation for highway-rail grade crossing safety projects are subject to the following requirements:

1. A political subdivision must file an application with the department of transportation for a grant.
2. A political subdivision grant applicant must provide ten percent matching funds for the project costs but no local matching funds are required for a highway-rail grade crossing on a state highway.
3. Grant funds may be allocated for development of railroad quiet zones, installation or upgrading of active warning devices, resurfacing crossings, building of grade separations, and other costs associated with these improvements.
4. An applicant for grant approval for development of a railroad quiet zone shall provide the department of transportation a copy of the notice of

intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent.

5. Grants for a single crossing may not exceed \$75,000 and grants for all crossings within a city may not exceed a cumulative amount of \$225,000.

**SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for taxable events occurring after June 30, 2009, and before July 1, 2011, and is thereafter ineffective.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 574****SENATE BILL NO. 2413**

(Senators Wardner, O'Connell, Bowman)  
(Representatives Kempenich, Skarphol, Wald)

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to an oil and gas gross production tax exemption for certain gas to generate electricity; to amend and reenact section 38-08-06.4 and subsection 7 of section 49-02-25 of the North Dakota Century Code, relating to flaring of gas and renewable electricity and recycled energy; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.** As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well; ~~or until June 30, 1986, for wells in production prior to July 1, 1985.~~ Thereafter, flaring of gas from the well must cease and the well must ~~either~~ be capped ~~or~~ connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well. An electrical generator and its attachment units to produce electricity from gas must be considered to be personal property for all purposes. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas is economically infeasible.

**SECTION 2. AMENDMENT.** Subsection 7 of section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted.

**SECTION 3.** A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

**Exemption of gas for electrical generation at well site.** Gas burned at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well is exempt from the tax under section 57-51-02.2.

**SECTION 4. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable events occurring after June 30, 2009.

Approved April 22, 2009

Filed April 23, 2009

## CHAPTER 575

### HOUSE BILL NO. 1304

(Representatives Skarphol, Hatlestad, Wald)  
(Senators Lyson, Wardner)

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production taxes; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>274</sup> **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. Apportionment and use of proceeds of tax.** The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall ~~credit~~:
  - a. Credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~six~~ eight million dollars per biennium; ~~including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit~~;
  - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and
  - c. Credit the remaining revenues to the state general fund.
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:
  - a. The first ~~one~~ two million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated to that the county.

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<sup>274</sup> Section 57-51-15 was also amended by section 31 of House Bill No. 1324, chapter 545.

- b. The ~~second next~~ one million dollars of annual revenue after the deduction for the amount provided for in subsection 4 from oil and gas produced in any county must be allocated seventy-five percent to ~~that the~~ county and twenty-five percent to the state general fund.
  - c. The ~~third next~~ one million dollars of annual revenue after the deduction of the amount provided for in subsection 4 from oil or gas produced in any county must be allocated fifty percent to ~~that the~~ county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 4 above three million dollars from oil or gas produced in any county
  - d. The next fourteen million dollars must be allocated twenty-five percent to ~~that the~~ county and seventy-five percent to the state general fund. ~~However, the~~
  - e. All annual revenue remaining after the allocation in subdivision d must be allocated ten percent to the county and ninety percent to the state general fund.
3. The amount to which each county is entitled pursuant to this under subsection 2 must be limited based upon the population of allocated within the county according to the last official decennial federal census as follows:
- a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year; however, a county may receive up to four million nine hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding three million nine hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.
  - b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year; however, a county may receive up to five million one hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million one hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.
  - e. Counties having a population of six thousand or more shall receive ~~no more than~~ so the first four million six hundred thousand dollars is allocated under subsection 4 for each fiscal year; however, a county may receive up to five million six hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of ten mills or more for combined levies for

~~county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any and any amount received by a county exceeding four million six hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general infrastructure fund and allocated under subsection 5.~~

~~Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through e must be deposited instead in the state's general fund.~~

- ~~3- 4.~~ a. ~~Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.~~
- b. ~~Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.~~

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.

- (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
  - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
  - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
  - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
    - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
    - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
    - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county hereunder for allocation under this subsection must be ~~paid~~ apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. ~~Provided, however, that in~~ In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation ~~in this section subdivision~~ must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:
- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
  - b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.

- e. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
- (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
  - (2) Four hundred twenty eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
5. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of the townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be

entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

6. Within sixty days after the end of each fiscal year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the fiscal year with the tax commissioner, in a format prescribed by the tax commissioner, showing:
- a. The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year; and
  - b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within sixty days after the time when reports under this subsection were due, the tax commissioner shall provide a report to the legislative council compiling the information from reports received under this subsection.

In developing the format for reports under this subsection, the tax commissioner shall consult the energy development impact office and at least two county auditors from oil-producing counties.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved May 4, 2009  
Filed May 4, 2009

**CHAPTER 576****SENATE BILL NO. 2034**

(Legislative Council)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 5 of section 57-51.1-03 of the North Dakota Century Code, relating to exemption from oil extraction tax on tertiary recovery projects that use carbon dioxide.

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

<sup>275</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission subsequent to June 30, 1994, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
- c. For purposes of this subsection, incremental production is defined in the following manner:
  - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to

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<sup>275</sup> Section 57-51.1-03 was also amended by section 1 of House Bill No. 1235, chapter 577.

the practice and procedure used by the commission at the time the project is certified.

- (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced.

The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
  - (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.

**CHAPTER 577****HOUSE BILL NO. 1235**

(Representatives Skarphol, Froseth, Wald)  
(Senators Bowman, O'Connell, Wardner)

AN ACT to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for horizontal wells; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

<sup>276</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008 April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for wells drilled and completed after April 30, 2009. However, if on May 1, 2009, the exemptions under subsection 3 of section 57-51.1-03 have been reinstated, this Act does not become effective until the first day of the month when the exemptions under subsection 3 of section 57-51.1-03 become ineffective, by operation of the trigger price provision in subsection 3 of section 57-51.1-03. This Act is effective for taxable events occurring through June 30, 2012, and is thereafter ineffective.

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<sup>276</sup> Section 57-51.1-03 was also amended by section 1 of Senate Bill No. 2034, chapter 576.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 28, 2009

Filed April 29, 2009

**CHAPTER 578****HOUSE BILL NO. 1164**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the transfer of oil extraction tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07. Allocation of moneys in oil extraction tax development fund.** Moneys deposited in the oil extraction tax development fund must be ~~apportioned quarterly~~ transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Twenty percent must be allocated as provided in section 24 of article X of the Constitution of North Dakota.
3. Sixty percent must be allocated and credited to the state's general fund for general state purposes.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 579****HOUSE BILL NO. 1140**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07.2 of the North Dakota Century Code, relating to the transfer of oil and gas gross production tax and oil extraction tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.2. (Contingent repeal - See note) Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula.** ~~All revenue deposited in the general fund during a biennium~~ The state treasurer shall deposit seventy-one million dollars of revenue derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds into the general fund. Revenue exceeding seventy-one million dollars must be transferred deposited by the state treasurer to a special fund in the state treasury known as in the permanent oil tax trust fund. The state treasurer shall transfer interest ~~Interest earnings of the permanent oil tax trust fund must be credited to the general fund at the end of each fiscal year.~~ Interest earnings of the permanent oil tax trust fund must be credited to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.

If the distribution formulas under chapter 57-51 or 57-51.1 are amended effective after June 30, 1997, the director of the budget shall adjust the seventy-one million dollar amount in this section by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 580****HOUSE BILL NO. 1126**  
(Natural Resources Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07.3 of the North Dakota Century Code, relating to the transfer of oil and gas gross production tax and oil extraction tax revenues.

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

<sup>277</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. ~~Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues, up to three million dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues for the previous three months.~~ Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund or the permanent oil tax trust fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to three million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>277</sup> Section 57-51.1-07.3 was also amended by section 1 of Senate Bill No. 2051, chapter 581.

**CHAPTER 581****SENATE BILL NO. 2051**

(Legislative Council)  
(Taxation Committee)

AN ACT to amend and reenact section 57-51.1-07.3 of the North Dakota Century Code, relating to oil and gas research fund deposits; and to provide for a legislative council study.

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

<sup>278</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues, up to ~~three~~ four million dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues for the previous three months. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

**SECTION 2. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying impact and taxation issues relating to production of mineral resources in North Dakota, specifically including:

1. Development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale;
2. Environmental, economic, and governmental impact of mineral production;
3. Infrastructure maintenance and development relating to mineral production;
4. Employment opportunities and issues relating to mineral production;
5. Comparison of mineral tax structures in North Dakota and other states; and
6. Water supplies and demands relating to mineral production.

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<sup>278</sup> Section 57-51.1-07.3 was also amended by section 1 of House Bill No. 1126, chapter 580.

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The legislative council shall reports it findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 582****SENATE BILL NO. 2088**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to repeal section 57-51.1-07.4 of the North Dakota Century Code, relating to transfer of oil and gas gross production tax and oil extraction tax revenues.

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

<sup>279</sup> **SECTION 1. REPEAL.** Section 57-51.1-07.4 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>279</sup> Section 57-51.1-07.4 was also amended by section 4 of House Bill No. 1394, chapter 170.

**CHAPTER 583****SENATE BILL NO. 2221**

(Senators Cook, Christmann, O'Connell)  
(Representatives Belter, Heller, Pinkerton)

AN ACT to create and enact a new subsection to section 57-60-01 and section 57-60-02.1 of the North Dakota Century Code, relating to a credit against privilege taxes on coal conversion facilities for carbon dioxide capture; to amend and reenact section 57-60-03 of the North Dakota Century Code, relating to measurement and recording of carbon dioxide capture; and to provide an effective date.

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

<sup>280</sup> **SECTION 1.** A new subsection to section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

"Carbon dioxide capture" means removal of carbon dioxide emissions from a coal conversion facility.

- a. For electrical generating plants, carbon dioxide captured is measured using the stack emissions of carbon dioxide from the facility as reported by the continuous emission monitoring system, in compliance with environmental protection agency rules in 40 CFR 75. The percentage reduction is determined by:
- (1) Determining the total carbon dioxide produced from the facility before the capture of carbon dioxide;
  - (2) Subtracting the stack emissions of carbon dioxide from the facility; and
  - (3) Dividing the result of paragraph 2 by the result of paragraph 1 and multiplying by one hundred, which results in the percentage of carbon dioxide captured.
- b. For coal gasification facilities, the carbon dioxide captured is determined by:
- (1) Determining the total carbon input to the facility by multiplying the percentage of carbon content in the coal fed to the facility, determined from the average of coal analysis for the taxing period, times the total tons of coal fed to the facility for the taxing period.
  - (2) Determining the amount of nonemissions carbon by multiplying the percentage of carbon content in all

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<sup>280</sup> Section 57-60-01 was also amended by section 1 of Senate Bill No. 2036, chapter 584.

hydrocarbon products, except carbon dioxide, leaving the facility times the tons of hydrocarbon products leaving the facility for the taxing period.

- (3) Subtracting the result under paragraph 2 from the result under paragraph 1 and multiplying the result times 3.667 to convert the amount of tons of carbon to tons of carbon dioxide, which results in the total tons of carbon dioxide emissions without capture.
- (4) The amount of carbon dioxide captured for the taxing period measured by a flow meter and converted to tons.
- (5) Dividing the result of paragraph 4 by the result from paragraph 3 and multiplying by one hundred, which results in the percentage of carbon dioxide captured.

**SECTION 2.** Section 57-60-02.1 of the North Dakota Century Code is created and enacted as follows:

**57-60-02.1. Carbon dioxide capture credit - Reporting requirement.** A coal conversion facility that achieves a twenty percent capture of carbon dioxide emissions during a taxable period after December 31, 2009, is entitled to a twenty percent reduction in the state general fund share of the tax imposed under section 57-60-02 during that taxable period. The facility is entitled to an additional reduction of one percent of the state general fund share of the tax imposed under section 57-60-02 for every additional two percentage points of its capture of carbon dioxide emissions. A maximum fifty percent reduction of the state general fund share of the tax imposed under section 57-60-02 is allowed for eighty percent or more capture of carbon dioxide emissions. A coal conversion facility may receive the reduction in coal conversion tax under this section for ten years from the date of first capture of carbon dioxide emission or for ten years from the date the coal conversion facility is eligible to receive the credit.

The operator of a coal conversion facility that receives a credit under this section shall report annually to the legislative council. The report must include:

1. An overview of the carbon dioxide capture project.
2. A status report on the current state of the carbon dioxide capture project, including data on the amount of carbon dioxide produced from the facility before the carbon dioxide capture project and the current carbon dioxide produced and captured from the facility.
3. Any recent changes to enhance the carbon dioxide capture system.
4. Information on the status of federal law and regulations related to the carbon dioxide capture project, including any benefits from the project realized by the operator under federal law and regulations.

**SECTION 3. AMENDMENT.** Section 57-60-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-03. Measurement and recording of synthetic natural gas, byproducts, beneficiated coal, or electricity produced and carbon dioxide capture.** The production of synthetic natural gas, byproducts, beneficiated coal, or

electrical power and data necessary to determine the amount of carbon dioxide captured must be measured at the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, beneficiated coal, and electrical power generated and data necessary to determine the amount of carbon dioxide captured. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas, beneficiated coal, and electrical power generated and subject to such taxes and data necessary to determine the amount of carbon dioxide captured. On or before October first of each year, the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after December 31, 2009.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 584****SENATE BILL NO. 2036**

(Legislative Council)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 11 of section 57-60-01 and subsection 2 of section 57-60-02 of the North Dakota Century Code, relating to the definition of repowering and exemptions from taxes on coal conversion facilities; and to provide an effective date.

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

<sup>281</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal ~~from~~ in its natural form or beneficiated coal into electric power.

**SECTION 2. AMENDMENT.** Subsection 2 of section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical energy generating ~~plants~~ units that begin construction or complete repowering are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the ~~plant~~ unit. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the ~~plant~~ unit. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific unit of the coal conversion facility for which the partial or complete exemption has been granted. Notwithstanding section 57-60-14, any tax collected from a ~~plant~~ unit subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of

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<sup>281</sup> Section 57-60-01 was also amended by section 1 of Senate Bill No. 2221, chapter 583.

generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 585****SENATE BILL NO. 2377**

(Senators Dotzenrod, Triplett)

AN ACT to amend and reenact subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to allocation of money in the coal development fund.

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

<sup>282</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
  - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
  - (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14

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<sup>282</sup> Section 57-62-02 was also amended by section 24 of House Bill No. 1015, chapter 15.

kilometers] of the tippel of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation and their assessed valuations.

- (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tippel of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation in the coal-producing county.
- (4) For the purposes of this ~~subsection~~ subdivision:
  - (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
  - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.

- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

Approved March 19, 2009  
Filed March 19, 2009

# TRUSTS, USES, AND POWERS

## CHAPTER 586

### SENATE BILL NO. 2073

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to amend and reenact sections 59-04.2-17 and 59-04.2-28 of the North Dakota Century Code, relating to payments under the Uniform Principal and Income Act.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 59-04.2-17 of the North Dakota Century Code is amended and reenacted as follows:

**59-04.2-17. (409) Deferred compensation, annuities, and similar payments.**

1. In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer; ~~including~~. For purposes of subsections 4, 5, 6, and 7, the term includes any payment from a separate fund, regardless of the reason for the payment. In this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.
2. To the extent that a payment is characterized as interest ~~or~~, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate it the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.
3. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.
4. ~~If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section;~~

the trustee shall allocate to income the additional amount necessary to obtain the marital deduction. Except as otherwise provided in subsection 5, subsections 6 and 7 apply, and subsections 2 and 3 do not apply, in determining the allocation of a payment made from a separate fund to a trust to which an election to qualify for marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made or to a trust that qualified for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

5. Subsections 4, 6, and 7 do not apply if and to the extent that the series of payments would, without application of subsection 4, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.
6. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand of the persons administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.
7. If a trustee cannot determine the internal income of a separate fund but can determine the value of a separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.
8. This section does not apply to ~~payments~~ a payment to which section 59-04.2-18 applies.

**SECTION 2. AMENDMENT.** Section 59-04.2-28 of the North Dakota Century Code is amended and reenacted as follows:

**59-04.2-28. (505) Income taxes.**

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.
2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.
3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid ~~proportionately~~:

- a. From income to the extent that receipts from the entity are allocated to income;:
  - b. From principal to the extent that:
    - (1) ~~Receipts~~ receipts from the entity are allocated only to principal; ~~and~~
    - (2) ~~The trust's share of the entity's taxable income exceeds the total receipts described in subdivision a and paragraph 4 of this subdivision.~~
  - c. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and
  - d. From principal to the extent that the tax exceeds the total receipts from the entity.
4. For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. After applying subsections 1 through 3, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 587****HOUSE BILL NO. 1458**

(Representative Klemin)  
(Senator Hogue)

AN ACT to create and enact a new subsection to section 59-09-03 and a new section to chapter 59-18 of the North Dakota Century Code, relating to the definition of irrevocable in reference to a trust and a presumption against eligibility for assistance programs for certain transactions; and to amend and reenact sections 59-16-13 and 59-17-06 of the North Dakota Century Code, relating to the duty of a trustee to inform beneficiaries and the settlor.

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

**SECTION 1.** A new subsection to section 59-09-03 of the North Dakota Century Code is created and enacted as follows:

"Irrevocable" means if used in reference to a trust, a trust that is not revocable, including a formerly revocable trust that has become irrevocable, whether by the death of a settlor or otherwise.

**SECTION 2. AMENDMENT.** Section 59-16-13 of the North Dakota Century Code is amended and reenacted as follows:

**59-16-13. (813) Duty to inform and report.**

1. Subject to section 59-14-03, while a trust is revocable or to the extent that trust property in a irrevocable trust is subject to a power of withdrawal, the duty of the trustee to inform and report are owed exclusively:
  - a. To the settlor, while a trust is revocable;
  - b. To the holder of the power of withdrawal to the extent the trust property is subject to the power during the period in which the power may be executed; and
  - c. To a qualified beneficiary when the qualified beneficiary is required by law or regulation to provide that information to determine eligibility for benefits or to verify continued eligibility for benefits under title 50.
2. With respect to trust property in an irrevocable trust which is not subject to a power of withdrawal:
  - a. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

- 2- b. A trustee upon written request shall promptly furnish to a qualified beneficiary a copy of the portion of the trust instrument:
- a- ~~To which relates to the interest of~~ a qualified beneficiary of a ~~revocable trust; and~~
  - b- ~~To a beneficiary of a trust that is not revocable.~~
- 3- c. A trustee within sixty days after accepting a trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
4. A trustee within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlers, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 6.
- d. A trustee shall notify the qualified beneficiaries of the trust existence, of the identity of the settlor, of the right to request a copy of the trust instrument, and of the right of the trustee's report as provided in subdivision f within sixty days after the date the trustee acquires knowledge:
    - (1) Of the creation of an irrevocable trust; or
    - (2) That a formerly revocable trust has become irrevocable.
- 5- e. A trustee shall notify the qualified beneficiaries ~~in advance~~ of any change in the method or rate of the trustee's compensation.
- 6- f. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified ~~or nonqualified~~ beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.
- 7- g. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.
8. ~~The duties of a trustee specified in this section are not subject to section 59-14-03.~~
- 9- h. ~~Subsections 3 Subdivisions c and 4 d~~ do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust

created before August 1, 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.

**SECTION 3. AMENDMENT.** Section 59-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**59-17-06. Language invoking standard.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted ~~under sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07~~ and under this chapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

**SECTION 4.** A new section to chapter 59-18 of the North Dakota Century Code is created and enacted as follows:

**Presumption against trustee.** A transaction between a trustee and the trust's beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which the trustee obtains any advantage from the trust's beneficiary is presumed to be entered by the trust's beneficiary without sufficient consideration and under undue influence. This presumption is a rebuttable presumption.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 588****HOUSE BILL NO. 1300**

(Representative Keiser)

AN ACT to amend and reenact subsection 1 of section 59-12-11 of the North Dakota Century Code, relating to modification of irrevocable trusts.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 59-12-11 of the North Dakota Century Code is amended and reenacted as follows:

1. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. An irrevocable trust that is modified under this subsection continues to be irrevocable.

Approved March 24, 2009

Filed March 24, 2009

**CHAPTER 589****HOUSE BILL NO. 1074**

(Government and Veterans Affairs Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to adopt the Uniform Prudent Management of Institutional Funds Act; and to repeal chapter 15-67 of the North Dakota Century Code, relating to the Uniform Management of Institutional Funds Act; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Definitions.** In this chapter:

1. "Charitable purpose" means the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, or any other purpose the achievement of which is beneficial to the community.
2. "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.
3. "Gift instrument" means a record, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.
4. "Institution" means:
  - a. A person, other than an individual, organized and operated exclusively for charitable purposes;
  - b. A government or governmental entity, to the extent that it holds funds exclusively for a charitable purpose; or
  - c. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
5. "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:
  - a. Program-related assets;
  - b. A fund held for an institution by a trustee that is not an institution;
  - c. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or
  - d. Perpetual trust funds established by article IX of the Constitution of North Dakota.

6. "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.
7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**SECTION 2. Standard of conduct in managing and investing institutional fund.**

1. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.
2. In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In managing and investing an institutional fund, an institution:
  - a. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
  - b. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
4. An institution may pool two or more institutional funds for purposes of management and investment.
5. Except as otherwise provided by a gift instrument, the following rules apply:
  - a. In managing and investing an institutional fund, the following factors, if relevant, must be considered:
    - (1) General economic conditions;
    - (2) The possible effect of inflation or deflation;
    - (3) The expected tax consequences, if any, of investment decisions or strategies;
    - (4) The role that each investment or course of action plays within the overall investment portfolio of the fund;
    - (5) The expected total return from income and the appreciation of investments;
    - (6) Other resources of the institution;

- (7) The needs of the institution and the fund to make distributions and to preserve capital; and
  - (8) An asset's special relationship or special value, if any, to the charitable purposes of the institution.
- b. Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
  - c. Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.
  - d. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better-served without diversification.
  - e. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.
  - f. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**SECTION 3. Appropriation for expenditure or accumulation of endowment fund - Rules of construction.**

1. Subject to the intent of a donor, as expressed in the gift instrument and subject to subsection 4, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:
  - a. The duration and preservation of the endowment fund;
  - b. The purposes of the institution and the endowment fund;
  - c. General economic conditions;
  - d. The possible effect of inflation or deflation;

- e. The expected total return from income and the appreciation of investments;
  - f. Other resources of the institution; and
  - g. The investment policy of the institution.
2. To limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument specifically must state the limitation.
3. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund and do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1.
4. The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:
- a. Apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or
  - b. Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

#### **SECTION 4. Management and investment functions - Delegation.**

1. Except as otherwise provided in a gift instrument or by law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:
- a. Selecting an agent;
  - b. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
  - c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.
3. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.
4. By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.
5. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law.

**SECTION 5. Release or modification of restrictions on management, investment, or purpose.**

1. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.
2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application. The court shall provide the attorney general with the opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.
3. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the court shall provide the attorney general with the opportunity to be heard.
4. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the attorney general, may release or modify the restriction, in whole or part, if:
  - a. The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;
  - b. More than twenty years have elapsed since the fund was established; and

- c. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**SECTION 6. Compliance - Determination.** Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or at the time action is taken, and not by hindsight.

**SECTION 7. Application to existing institutional funds.** This chapter applies to institutional funds existing on or established after the effective date of this Act. As applied to institutional funds existing on the effective date of this Act, this chapter governs only decisions made or actions taken on or after that date.

**SECTION 8. Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 7001(a) of that Act, or authorize electronic delivery of any of the notices described in section 7003(b) of that Act.

**SECTION 9. REPEAL.** Chapter 15-67 of the North Dakota Century Code is repealed.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

# WAREHOUSING AND DEPOSITS

## CHAPTER 590

### SENATE BILL NO. 2124

(Agriculture Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact section 60-02-19.1, subsection 4 of section 60-02.1-01, and section 60-02.1-14 of the North Dakota Century Code, relating to public grain warehouse and facility-based grain buyer credit-sale contract transfers and the definition of facility-based grain buyer.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 60-02-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-19.1. Credit-sale contracts.** A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09; ~~however,~~ However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as

of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. ~~However, if the license of the warehouseman is transferred to another licensed warehouseman, credit-sale contracts may be assigned to the transferee.~~ When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer.

**SECTION 2. AMENDMENT.** Subsection 4 of section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.

**SECTION 3. AMENDMENT.** Section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-14. Credit-sale contracts.** A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. ~~However, if the license of the grain buyer is transferred to another grain buyer or licensed warehouseman, credit-sale contracts,~~

if so agreed by the seller and transferee, may be assigned to the transferee. When a facility is transferred under this chapter, credit-sale contracts may be assigned to another licensed facility-based grain buyer or public warehouseman.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 591****SENATE BILL NO. 2321**

(Senators Wanzek, Heckaman, Klein)  
(Representatives Brandenburg, D. Johnson, Mueller)

AN ACT to amend and reenact sections 60-02.1-41 and 60-10-16 of the North Dakota Century Code, relating to roving grain buyers.

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

**SECTION 1. AMENDMENT.** Section 60-02.1-41 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-41. (~~Effective through July 31, 2009~~) Roving grain buyers - Exception - Applicability of provisions.** Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 or from a facility-based grain buyer licensed and bonded under this chapter. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

**SECTION 2. AMENDMENT.** Section 60-10-16 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-16. (~~Effective through July 31, 2009~~) Roving grain buyers - Exception - Applicability of provisions.** Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 or from a facility-based grain buyer licensed and bonded under chapter 60-02.1. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

Approved April 8, 2009  
Filed April 9, 2009

# WATERS

## CHAPTER 592

### SENATE BILL NO. 2316

(Senators Fischer, Flakoll, Robinson)  
(Representatives Damschen, Kaldor, S. Kelsh)

AN ACT to direct the state water commission to develop policies regarding water retention projects.

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

**SECTION 1. State water commission - Policies for water retention projects.** The state water commission shall develop policies, including cost-sharing guidelines, which further the development of water retention projects for flood control. The commission shall provide a report regarding the policies to the sixty-second legislative assembly.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 593****HOUSE BILL NO. 1286**  
(Representative DeKrey)

AN ACT to amend and reenact subsections 3 and 6 of section 61-04-01.1 of the North Dakota Century Code, relating to the definitions of domestic use and irrigation use.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 6 of section 61-04-01.1 of the North Dakota Century Code are amended and reenacted as follows:

3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including; ~~but not limited to~~ heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding ~~one acre [40 hectare]~~ five acres [2.0 hectares] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
  
6. "Irrigation use" means the use of water for application to more than ~~one acre [40 hectare]~~ five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 594

### HOUSE BILL NO. 1321

(Representatives Wrangham, DeKrey, J. Kelsh, Nottestad)  
(Senator Freborg)

AN ACT to amend and reenact sections 61-06-09, 61-06-10, 61-06-11, 61-06-13, 61-06-14, 61-06-15, and 61-06-16 of the North Dakota Century Code, relating to allowing the board of directors of an irrigation district to hold mail ballot elections.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 61-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-09. Regular election of irrigation districts - Mail ballot elections.** The regular election of irrigation districts ~~shall~~ must be held on the second Tuesday in February in each even-numbered year. The board of directors of an irrigation district may hold a regular or special election by mail ballot. If the board determines to hold an election by mail ballot, the board shall notify the electors of the district that the election will be held by mail ballot and that no polling places will be open for the election.

**SECTION 2. AMENDMENT.** Section 61-06-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-10. Notice of election after district is organized - Contents - Form.** Within thirty-five days of, but at least twenty-five days ~~prior to~~ before, any regular or special election held in an irrigation district, the secretary of the board of directors shall publish a notice of the election in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The notice must specify the matters to be voted upon; and if the election is to be held by mail ballot. If the election is not held by mail ballot, the notice must specify the location of the polling place or places; and the time of their opening and closing of the polling places. The notice must be in substantially the following form:

Notice is given that on \_\_\_\_\_, \_\_\_\_\_, an election will be held at \_\_\_\_\_ (here designate the polling place) for the purpose of electing \_\_\_\_\_ members of the board of directors and for the purpose of voting upon the questions submitted by the directors of the district. (The election will be held by mail ballot.) or (The election will be held at \_\_\_\_\_.) Polls will be opened at one p.m. and will be closed at five p.m. of that day.) Notice is further given that any elector desiring to have the elector's name appear on the ballot must file a request in writing with the secretary of the district not less than twenty days before the election.

**SECTION 3. AMENDMENT.** Section 61-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-11. Board of election of irrigation district - Failure of member of election board to be present.** ~~Prior to~~ Before the date of the regular election, the

board shall appoint from the electors of the district one clerk and two judges who shall constitute the board of election. If the board ~~shall fail~~ fails to appoint ~~such a~~ board of election, or if the members appointed do not attend at the opening of the mail ballots or the opening of the polls on the day of election, the electors of the district present at that hour may appoint the members of the election board or fill the place of an absent member ~~thereof~~. The board of directors, in its order or resolution appointing the members of the board of election, shall designate the time and place where the mail ballots will be opened or where the election shall will be held.

**SECTION 4. AMENDMENT.** Section 61-06-13 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-13. Ballot at irrigation district elections - Contents - Mail ballots.**

1. At least fifteen days before an election in an irrigation district, the secretary shall prepare and have typewritten, mimeographed, or printed an official ballot containing the names of all candidates which have been filed with the secretary. The ballot ~~shall~~ must:
  1. a. Be headed "Official Ballot";
  2. b. Contain all names thus filed;
  3. c. Show the name of the district;
  4. d. State the number of ~~persons~~ individuals to be voted for;
  5. e. Have blank spaces below for writing in other names; and
  6. f. State any question or resolution submitted to the electors by the board of directors.
2. The provisions of this chapter ~~shall do not prevent any person an~~ individual desiring to be a candidate at ~~such the~~ election and who has failed to file as provided in this chapter, from furnishing stickers to be attached to the ballot by the electors. ~~Such~~ The stickers ~~shall may~~ must be over one-half inch [1.27 centimeters] in width and ~~shall~~ must have printed thereon one name only. ~~Any~~
3. If the election is not held by mail ballot any elector who will be absent from the irrigation district on the day of the election may vote an absent voter's ballot at that election. The secretary shall provide the official ballot to any elector who ~~makes application~~ applies for an absent voter's ballot, and the absent voter ~~must~~ shall submit the absent voter's ballot to the secretary of the district, along with an affidavit that the ballot submitted represents the elector's vote at the election, on or before the day of the election. An absent voter's ballot must be the official ballot, and the ballot and affidavit must be actually delivered to the secretary or the election board before the polls close on election day. The secretary shall submit any absent voters' ballots to the election board on the day of the district election.
4. If the board of directors of the irrigation district determines to hold the election by mail ballot, the secretary of the board of directors shall mail an official mail ballot with a return identification envelope and instructions sufficient to describe the voting process to each elector on

the fifteenth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The secretary shall mail the ballot by first-class mail, addressed to the address of the elector and placed in an envelope that is prominently marked "Do Not Forward". The return identification envelope must include an affidavit for the elector to certify that the ballot submitted represents the elector's vote. An elector entitled to cast more than one vote must be provided separate ballots for each vote to which the elector is entitled, and a return envelope with instructions sufficient to keep the ballots secret. An elector may obtain a replacement ballot if a mail ballot is destroyed, spoiled, lost, or not received by the elector by signing a sworn statement that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the secretary of the district no later than four p.m. on the day before the election. An elector voting by mail ballot shall either deliver the mail ballot to the secretary of the district before five p.m. on the day of the election or mail the ballot, which must be postmarked no later than the day before the election.

**SECTION 5. AMENDMENT.** Section 61-06-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-14. Oath required of members of election board - Chairman of election board to administer.** Before opening the polls at an irrigation district election or opening mail ballots, each member of the election board shall take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and to the best of my ability.

~~Such~~ The oath or affirmation may be administered by any director of the district or any officer authorized to administer oaths. The board of directors shall designate one of the judges as chairman of the election board and the chairman of the election board ~~shall have the authority to may~~ administer and certify all oaths or affirmations taken by other members of the election board and shall administer and certify all oaths or affirmations required during the progress of the election.

**SECTION 6. AMENDMENT.** Section 61-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-15. Opening and closing hours of polls at irrigation district elections.** ~~The~~ If the election is not held by mail ballot, the polls shall must be open at one p.m. of the election day and ~~shall must~~ be kept open until five p.m. of the same day.

**SECTION 7. AMENDMENT.** Section 61-06-16 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-16. Canvass of ballots after closing polls - Delivery of materials to directors.** Immediately after ~~the polls are closed~~ five p.m. on the day of the election, the election board publicly shall open and ~~proceed to~~ canvass the ballots cast and shall declare the result of ~~such the~~ canvass. A mail ballot may be counted only if the ballot is returned in the return identification envelope and is signed by the elector.

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The chairman shall wrap securely all lists, tally sheets, oaths and affirmations, and other documents relating to the progress of the election and shall deliver the same to the secretary of the board of directors of the district.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 595

### SENATE BILL NO. 2251

(Senators Fischer, G. Lee, J. Lee)

(Representatives Kasper, Nelson, Nottestad)

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to compensation for water resource district managers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>283</sup> **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.** When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. The terms of office of managers appointed to the first water resource board shall be determined by lot and as herein provided. If the water resource board consists of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board consists of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of the managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and recurring flooding. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of a water resource board shall receive the sum of at least ~~forty-five~~ seventy-five dollars but not more than one hundred thirty-five dollars per

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<sup>283</sup> Section 61-16-08 was also amended by section 1 of Senate Bill No. 2253, chapter 596.

day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved April 24, 2009  
Filed April 29, 2009

## CHAPTER 596

### SENATE BILL NO. 2253

(Senators Fischer, G. Lee, Miller)  
(Representatives Kasper, Nelson, Nottestad)

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to the appointment of water resource district managers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>284</sup> **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.** When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. The terms of office of managers appointed to the first water resource board shall be determined by lot and as herein provided: If the water resource board consists of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board consists of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of the managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and recurring flooding. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of a water resource board shall receive the sum of at least forty-five dollars per day while performing duties as a member of the board, and an

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<sup>284</sup> Section 61-16-08 was also amended by section 1 of Senate Bill No. 2251, chapter 595.

allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 597****SENATE BILL NO. 2255**

(Senators Fischer, G. Lee, Nething)

(Representatives Kasper, Nelson, Nottestad)

AN ACT to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to exercise of the power of eminent domain by water resource districts.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal or state funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 598****SENATE BILL NO. 2254**

(Senators Fischer, J. Lee, Miller)

(Representatives Kasper, Nelson, Nottestad)

AN ACT to amend and reenact section 61-16.1-40.1 of the North Dakota Century Code, relating to maintenance of federal water management projects.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-40.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established.** If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction With regard to projects constructed by a federal agency, including the soil conservation service or natural resources conservation service, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed two dollars per acre [.40 hectare] annually on agricultural lands and may not exceed two dollars annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members. If a board that undertakes a project finds that the project may benefit lands in this state outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located. The board of each water resource district containing lands benefited by a project must approve the project and assessment by vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by vote of two-thirds of its members. If a project and assessment is not approved by all affected water resource boards and boards of county commissioners, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are jointly addressed. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside of the district. Before an assessment may be levied under this section, a public hearing must be held. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 599****SENATE BILL NO. 2298**

(Senators G. Lee, Anderson, Wanzek)  
(Representatives Berg, S. Kelsh, Pollert)

AN ACT to create and enact eleven new sections to chapter 61-24 of the North Dakota Century Code, relating to authorizing revenue bonds for the Red River valley water supply project; and to amend and reenact sections 61-24-01, 61-24-08, 61-24-19, 61-39-01, and 61-39-03 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District.

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

**SECTION 1. AMENDMENT.** Section 61-24-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-01. Development and utilization of land and water resources declared a public purpose - Declaration of intention - Interpretation.** It is hereby declared that more effective development and utilization of the land and water resources of this state, protection and preservation of the benefits therefrom, opportunity for greater economic security, protection of health, property and enterprise, and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose, the accomplishment of which, among other things, demands, and it is hereby declared necessary, that the Garrison diversion unit of the Missouri River basin project as authorized by Act of Congress approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof and supplementary thereto, be established and constructed:

1. To provide for the future economic welfare and prosperity of the people of this state, and particularly of the people residing in the area embraced within the boundaries of the conservancy district created by this chapter.
2. To provide for the irrigation of lands within the sections of such district periodically afflicted with drought, and to stabilize the production of crops thereon.
3. To replenish and restore the depleted waters of lakes, the Red, Shyenne, James, and other rivers, and streams in the district, and to stabilize the flow of these streams.
4. To replenish the waters, and to restore the level of Devils Lake, Stump Lake, Lake Williams, and Turtle Lake.
5. To make available within the district, or outside the district to the extent authorized by a joint powers agreement under chapter 54-40.3, waters diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public uses.

6. To study and provide for the water needs of eastern North Dakota communities and water districts and western Minnesota communities through a Red River valley water supply project.

The provisions hereof shall not be construed to, in any manner, abrogate or limit the rights, powers, duties, and functions of the state water commission, but shall be held to be supplementary thereto and an aid thereof. Nor shall this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization and maintenance of irrigation districts, flood irrigation districts, water resource districts, drainage districts, or watershed protection districts, nor as precluding the establishment of any such district wholly or in part within the boundaries of the district created by this chapter.

**SECTION 2. AMENDMENT.** Section 61-24-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-08. Powers and duties of the district board of directors.** The board of directors of the Garrison Diversion Conservancy District shall have the power:

1. To sue and be sued in the name of the district.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, reservoirs, canals, hydroplants, irrigation systems, pipelines, and any other device for the conservation, storage and use of water, and to secure the right of access to such works and the right of the public access to the waters impounding thereby or emanating therefrom.
3. To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the Garrison diversion unit, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the Garrison diversion unit, or any part thereof.
5. To furnish assurances of cooperation and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the performance of obligations entered into with the United States for the construction, operation, or maintenance of works of the Garrison diversion unit of the Missouri River basin project as defined by Act of Congress, approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof or supplementary thereto.
6. To construct separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal

place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.

7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the district.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the Garrison diversion unit, or any part thereof.
9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors, technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America in connection with the construction, operation, and maintenance of works of the said Garrison diversion unit of the Missouri River basin project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, bonds and mortgages or other securities the payment of which is guaranteed by the United States or an instrumentality or agency thereof, or bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. The amount which may be levied in any one year for operating the district prior to authorization by Congress of the Garrison diversion project shall not exceed ten percent of the maximum permissible.
10. To enter into a contract or contracts for a supply of water from the United States and to sell, lease, and otherwise contract to furnish any such water for beneficial use to irrigation districts, persons, other public and private corporations, or limited liability companies within or outside the district.
11. To operate and maintain or to contract for the operation and maintenance of water supply and irrigation works serving lands and uses within or outside the district, and in connection therewith, to maintain a reserve fund to meet major unforeseen costs of operation and maintenance.
12. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States and authorization to make collections of money for and on behalf of the United States in connection with the Garrison diversion unit.
13. To use navigable lakes and streams within the conservancy district for holding, impounding, and conveying water of the Garrison diversion unit.

14. To provide administrative aid and assistance in the relocation of buildings and the replacement of land to persons affected by the Garrison diversion development in an effort to make certain that such persons are treated fairly and that they do not suffer financial hardship due to the development of the Garrison diversion unit.
15. To sell or exchange any and all real property purchased or acquired by the district. All moneys received pursuant to any such sale or exchange shall be deposited in the Bank of North Dakota to the credit of the district and may be disbursed only for the payment of expenses of the district as specified in subsection 9.
16. To borrow money as is provided in this chapter.
17. To issue and sell revenue bonds to finance projects in an amount or amounts determined by the board, including an amount for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of constructing a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
18. To utilize some or all proceeds of its revenue bonds to acquire, construct, reconstruct, or improve one or more projects, or any feasibility study or preliminary economic, engineering, or legal work relating to any project.
19. To refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the district.
20. To pledge any and all income, profits, and revenues received by the district in connection with the operation, lease, sale, or other disposition of all or any part of a water project to secure the payment of bonds issued and sold to finance the project or otherwise. Tangible real or personal nonrevenue property of the district may not be liable to be forfeited or taken in payment of any bonds issued under this chapter and debt on the general credit of the district may not be incurred in any manner for payment of bonds under this chapter.
21. To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the district and in anticipation of the collection of the revenues of the district, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, extension, operation, or maintenance of a project.
22. To pledge district revenues, grants, and any other project-related payments to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the district which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the district improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the district and persons that contract to purchase water from the district.

23. To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of tangible real or personal nonrevenue property of the district may not be created by an such contract or instrument.
24. To accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter agreements with the agency respecting the loan or grants.
25. To contract debts and borrow money and provide for payment of debts and expenses of the district.
26. To distribute water to western Minnesota cities that enter water service contracts for water.
27. To enter water service contracts with municipalities, water districts, or other political subdivisions in this state and public utilities in Minnesota as part of the Red River valley water supply project, regardless of whether the acquisition, construction, or reconstruction of any Red River valley water supply project is actually completed and whether water actually is delivered under the contracts. These contracts with cities and water districts are authorized to be executed without limitation on term of years notwithstanding any limitation to the contrary.

**SECTION 3. AMENDMENT.** Section 61-24-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-19. Easement granted for ditches, pipelines, canals, tramways, and transmission lines on any public lands.** In connection with the construction and development of the Garrison diversion unit of the Missouri River basin project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for ditches, pipelines, or canals and for tunnels, tramways, and telephone and electric transmission lines constructed as part of the Garrison diversion unit; provided, however, that the director of the department of transportation, the board of county commissioners, or the board of township supervisors must approve the plans of the bureau of reclamation with respect to the use of any and all right of way of roads under their respective control prior to such grant becoming effective.

**SECTION 4.** Eleven new sections to chapter 61-24 of the North Dakota Century Code are created and enacted as follows:

**Resolution authorizing the issuance of revenue bonds.**

1. The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.
2. Each resolution providing for the issuance of bonds provided for in this chapter must contain the purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

**Provisions governing bonds.** The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after adoption of the original resolution must prescribe:

1. The rates of interest, or if an interest rate is variable, the method for calculating the interest rate.
2. Whether the bonds will be in one or more series.
3. The dates the bonds will bear.
4. The times the bonds will mature.
5. The medium in which the bonds will be payable.
6. The places where the bonds will be payable.
7. The terms of redemption, if any, to which the bonds will be subject.
8. The manner in which the bonds will be executed.
9. The terms, covenants, and conditions that the bonds will contain.
10. The form in which the bonds will be issued, either coupon or registered.

**Sale of bonds - When private sale authorized - Public sale and notice.** Revenue bonds or refunding bonds may be sold at public or private sale on any terms as the board deems appropriate.

**Notes issued pending preparation of bonds - Negotiability.** Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the district.

**Validity of notes and bonds.** Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the individuals whose signatures appear on the notes or bonds have ceased to be officers of the issuing district. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

**Notes and bonds exempt from taxation.** Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other entities carrying on an investment business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their interest and income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

**Covenants and provisions that may be inserted in resolution authorizing bonds.**

1. Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:
  - a. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.
  - b. The use and disposition of all or a portion of the district's income, profits, and revenues.
  - c. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
  - d. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
  - e. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.
  - f. The creation, priority, and enforcement of liens against the district's income, profits, or revenues.
  - g. The issuance of other or additional bonds or instruments payable from, or constituting a charge against, the district's income, profits, or revenues.
  - h. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the district's borrowing rate or reduce its exposure to interest rate risk, or both.
  - i. The keeping, inspection, and audit of books of account.
  - j. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
  - k. The rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations.
  - l. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of the trustee, and the limitations of liabilities of the trustee.
  - m. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
  - n. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or



- b. Make certain any project financed by the district is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. The fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least to:
    - (1) Pay all current expenses of operation and maintenance of any project;
    - (2) Make all payments required under any water purchase contract the district may execute;
    - (3) Pay the interest and principal on the district's notes and bonds as they become due;
    - (4) Comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the funding bonds; and
    - (5) Meet any other obligations of the district that are charges, liens, or encumbrances upon the revenues of the district.
  - c. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the district in good repair, working order, and condition.
  - d. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.
  - e. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.
  - f. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
  - g. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.
  - h. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the district are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.
2. The duties contained in this section do not require any expenditure by the district of any funds other than revenue received from a project or

water sale contract. The performance of the duties in this section is of the essence of the contract of the district with the bondholders.

**Remedies of bondholders in general.**

1. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:
  - a. By mandamus or other civil action, enforce the holder's rights against the district and its board and any of its officers, agents, or employees and may require the district or the board or any officers, agents, or employees of the district or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
  - b. By civil action, require the district and the board to account as if the district and the board were the trustees of an express trust.
  - c. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
  - d. Bring suit upon the bond.
2. A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

**Bonds as legal investments and security.** Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other persons carrying on an investment business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for all public deposits.

**SECTION 5. AMENDMENT.** Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-39-01. Findings and declaration of policy.** The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is

declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern North Dakota. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

**SECTION 6. AMENDMENT.** Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-39-03. Lake Agassiz water authority - Board of directors.** The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.

8. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.

North Dakota city members must be selected for two-year terms by election by cities located east of state highway 1 during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Water district members must be selected for two-year terms by election by water districts located east of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Lake Agassiz water authority or the Garrison Diversion Conservancy District.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 600

### SENATE BILL NO. 2193

(Senators Wardner, Christmann, Robinson)  
(Representatives Hanson, Hofstad, Nottestad)

AN ACT to amend and reenact sections 61-24.5-01, 61-24.5-09, and 61-24.5-10 of the North Dakota Century Code, relating to the powers and duties and tax levy of the southwest water authority.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 61-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-01. Findings and declaration of policy.** It is hereby found and declared by the legislative assembly that many areas and localities in southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. It is also found and declared that other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and necessitate and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, be established and constructed, to:

1. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including, but not limited to, domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

It is also declared necessary to study and further develop water resources to provide adequate water supplies for energy, industrial, agriculture, and other opportunities in southwest North Dakota. The provisions hereof may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary thereto.

**SECTION 2. AMENDMENT.** Section 61-24.5-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-09. Powers and duties of the district board of directors.** The board of directors of the southwest water authority has the power:

1. To sue and be sued in the name of the authority.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, and all other appurtenant facilities used in connection with the southwest pipeline project, or any part thereof.
3. To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the southwest pipeline project, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the southwest pipeline project, or any part thereof.
5. To furnish assurances of cooperation, and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations and political subdivisions of North Dakota for the performance of obligations for the construction, operation, or maintenance of the southwest pipeline project, or any part thereof, or for the delivery of water to any such department, agency, or political subdivision.
6. To construct or purchase separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the authority, and to procure the services of engineers and other technical experts, and to retain an attorney or attorneys to assist, advise, and act for it in its proceedings.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the southwest pipeline project, or any part thereof.

9. To enter into a contract or contracts for a supply of water from the United States or the state water commission and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or the state water commission and authorization to make collections of money for and on behalf of the United States or the state water commission in connection with the southwest pipeline project, or any part thereof.
11. To sell or exchange any and all real property purchased or acquired by the authority. All moneys received pursuant to any such sale or exchange shall be deposited to the credit of the authority and may be disbursed for the payment of expenses of the authority.
12. Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the authority or received from federal or state sources.
13. To study and analyze options for providing additional water supplies to southwest North Dakota for purposes including domestic, rural water, municipal, livestock, energy development, industrial, mining, and other uses.
14. To conduct engineering, legal, financial, educational, and other activities to further the completion of the southwest pipeline project, or any part thereof, or any other works or projects necessary to provide adequate water supplies for southwest North Dakota.

**SECTION 3. AMENDMENT.** Section 61-24.5-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-10. District budget - Tax levy.** For each taxable year through ~~2040~~ 2020, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. All moneys collected pursuant to the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, certificates of deposit guaranteed or insured by the United States or an instrumentality or agency thereof,

and bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-16.1-11.

Approved March 19, 2009

Filed March 19, 2009

## CHAPTER 601

### HOUSE BILL NO. 1278 (Representatives Porter, R. Kelsch) (Senator Cook)

AN ACT to amend and reenact sections 61-24.5-04, 61-24.5-07, and 61-24.5-08 of the North Dakota Century Code, relating to members of the board of directors of the southwest water authority.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>285</sup> **SECTION 1. AMENDMENT.** Section 61-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-24.5-04. Board of directors - Officers - Meetings - Compensation.**

The authority must be governed by a board of directors who must be chosen in accordance with this chapter. One director must be elected from each county within the authority, ~~and two directors must be elected in the city of Dickinson, and one director must be elected in the city of Mandan.~~ The director from Stark County may not be a resident of the city of Dickinson. The director from Morton County may not be a resident of Mandan. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative council under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

**SECTION 2. AMENDMENT.** Section 61-24.5-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-24.5-07. Election of city directors of the southwest water authority.**

Any person who is a resident and qualified elector of the city of Dickinson or Mandan who aspires to the office of director of the southwest water authority shall, at least sixty days and before five p.m. on the sixtieth day before the election, file with the city auditor a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election, except that the petition for the first election must be signed by not less than two hundred qualified electors. Signers of a petition must reside within the corporate limits of the city, and each signer of the petition shall include with the signer's name the signer's mailing address. The petition must include the candidate's name, post-office address, and the title of the office of the southwest water authority for which the candidate is seeking election.

The petition must be accompanied by an affidavit substantially as follows:

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<sup>285</sup> Section 61-24.5-04 was also amended by section 94 of House Bill No. 1436, chapter 482.



Before assuming the duties of the office of director, each director shall take and subscribe to the oath of office prescribed by law for civil officers. The authority treasurer must be bonded in an amount as the board may prescribe.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 602

### SENATE BILL NO. 2317

(Senators Fischer, Flakoll, Nelson)  
(Representatives Hawken, Hofstad, Kaldor)

AN ACT to amend and reenact sections 61-24.7-01, 61-24.7-02, and 61-24.7-05 of the North Dakota Century Code, relating to the funding plan for the Red River valley water supply project.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-24.7-01. Legislative findings and intent - Authority to issue bonds.**

1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission ~~assist in financing~~ provide a one-third share of the cost of constructing the Red River valley water supply project ~~through the issuance of bonds.~~
2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 2. AMENDMENT.** Section 61-24.7-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.7-02. Funding - Red River valley water supply project - Bond issuance amount.** The state water commission may provide a portion of the ~~nonfederal~~ state share of funds necessary to construct the Red River valley water supply project by issuing bonds in an amount not to exceed forty million dollars plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this chapter.

**SECTION 3. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.7-05. State funding plan.**

1. The remaining sixty million dollars to comprise a total of one hundred million dollars to meet the one hundred million dollar state share of phase one of the Red River valley water supply project is to be funded over three bienniums. The sixty million dollars is to be derived from thirty million dollars from the general fund and thirty million dollars from the resources trust fund.
2. The state shall provide an additional one hundred million dollars of municipal, rural, and industrial water supply funds for phase two of the Red River valley water supply project, to meet the two hundred million dollar state share of the project. The legislative assembly declares its intent to provide state funding for one-third of the total cost of constructing the Red River valley water supply project.
2. Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

Approved April 22, 2009  
Filed April 23, 2009

# WEAPONS

## CHAPTER 603

### HOUSE BILL NO. 1351

(Representatives Porter, DeKrey)

(Senators Holmberg, Lyson, Nething, Wanzek)

AN ACT to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to the carrying of a firearm at a public gathering.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>286</sup> **SECTION 1. AMENDMENT.** Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.**

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty. In addition, a municipal court judge licensed to practice law in this state, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1 if the individual ~~is otherwise licensed to carry a firearm under section 62.1-04-03~~ and maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

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<sup>286</sup> Section 62.1-02-05 was also amended by section 1 of House Bill No. 1389, chapter 604.

3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 604

### HOUSE BILL NO. 1389

(Representatives Karls, Dahl, Damschen, DeKrey)  
(Senators Nething, Triplett)

AN ACT to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to the possession of a firearm in a park.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>287</sup> **SECTION 1. AMENDMENT.** Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.**

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings. The term "public gathering" does not apply to a state or federal park.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty. In addition, a municipal court judge licensed to practice law in this state, a district court judge, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1 if the individual is otherwise licensed to carry a firearm under section 62.1-04-03 and maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

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<sup>287</sup> Section 62.1-02-05 was also amended by section 1 of House Bill No. 1351, chapter 603.

3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 605

### SENATE BILL NO. 2415

(Senators Triplett, J. Lee, Miller)  
(Representatives Gruchalla, Porter)

AN ACT to amend and reenact section 62.1-04-03 of the North Dakota Century Code, relating to a reciprocal licensure and classification system to carry a firearm or dangerous weapon concealed; to provide an effective date; and to provide application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>288</sup> **SECTION 1. AMENDMENT.** Section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-04-03. License to carry a firearm or dangerous weapon concealed.**

1. The ~~chief director~~ of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the ~~chief director by a resident or nonresident citizen of the United States~~ if the following criteria are met:
  - a. ~~The applicant is at least twenty-one years of age for a class 1 license or at least eighteen years of age for a class 2 license.~~
  - b. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
  - ~~b. c.~~ The applicant is not a person specified in section 62.1-02-01.
  - ~~c. d.~~ The applicant has the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has ~~attended a successfully completed the~~ testing procedure conducted ~~pursuant to rules adopted by the attorney general~~ by a certified firearm or dangerous weapon instructor. ~~The testing procedure for approval of a concealed weapons license must be an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions. A weapons instructor certified by the attorney general shall conduct the testing procedure. The attorney general shall develop rules that ensure that this testing will be conducted.~~

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<sup>288</sup> Section 62.1-04-03 was also amended by section 25 of House Bill No. 1015, chapter 15.

The person conducting the testing may assess a charge of up to twenty-five dollars for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license may certify a firearm or dangerous weapon instructor based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation.

- d. e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency. To pass a background investigation, an applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records.
  - e. f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.
2. The attorney general shall offer class 1 and class 2 licenses to carry a firearm or dangerous weapon concealed pursuant to the following requirements:
- a. An applicant for a class 1 license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate familiarity with a firearm or dangerous weapon, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm or dangerous weapon to be concealed may be satisfied by one of the following:
    - (1) Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapons instructor;
    - (2) Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapon course of training;
    - (3) Possession of a license from another state to carry a firearm or dangerous weapon, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or
    - (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm or dangerous weapon.
  - b. An applicant for a class 2 license is required to successfully complete the open book test offered for the class 1 license.

- c. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required to renew a class 2 concealed weapons license. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. A license issued under this section before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 requirements and satisfaction of the age requirement.
3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
- 3- 4. The license fee for a concealed weapons license is ~~twenty five dollars. For forty-five dollars of this fee must be credited to the state general fund and fifteen dollars of this fee, which must be credited to the attorney general's operating fund up to a total of seventy-five thousand dollars each biennium. Any collections from fifteen dollars of this fee in excess of the seventy-five thousand dollars credited to the attorney general's operating fund each biennium must be credited to the state general fund.~~ The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.
- 4- 5. The chief director of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for ~~three~~ five years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief director. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief director of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
- 5- 6. The chief director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.
- 6- 7. The applicant may appeal a denial or revocation of this license to the district court ~~of the applicant's county of residence~~ of Burleigh County.

- ~~7.~~ 8. Information collected from an applicant under this section is confidential information. However, the information may be disclosed:
- a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
  - b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
  - c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.
- ~~8.~~ 9. The attorney general may adopt any rules necessary to carry out this title.

**SECTION 2. EFFECTIVE DATE.** Subsection 5 of section 1 of this Act becomes effective on July 1, 2011.

**SECTION 3. APPLICATION.** A license issued before the effective date of this Act is valid until the license must be renewed or upon issuance of a license to a licensee under this Act.

Approved April 24, 2009  
Filed April 29, 2009

# WEEDS

## CHAPTER 606

### SENATE BILL NO. 2371

(Senators Miller, Bowman, Flakoll)

(Representatives Froelich, Kilichowski, Kingsbury)

AN ACT to provide for the control of invasive species; and to amend and reenact sections 63-01.1-06 and 63-01.1-07.6 of the North Dakota Century Code or in the alternative to amend and reenact section 16 of House Bill No. 1026, as approved by the sixty-first legislative assembly, relating to the distribution of state appropriations for noxious weed control.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** If House Bill No. 1026 does not become effective, section 63-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **63-01.1-06. Funding of county programs.**

1.
  - a. The board of county commissioners may pay expenses from the county general fund to further the county noxious weed control program under this chapter, including to provide noxious weed control or eradication along public highways in the county.
  - b. The county weed board may certify annually to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all taxable property in the county, to carry out this chapter.
  - c. The board of county commissioners by majority vote may certify up to two additional mills on the taxable valuation of all taxable property in the county, except property within the corporate limits of a city that establishes a program under this chapter.
  - d. The board of county commissioners shall levy the tax.
  - e. The county treasurer shall hold all taxes levied and collected in a separate fund known as the noxious weed control or eradication fund. Moneys in the fund must be used to pay the salaries and expenses of the county weed board and the county weed control officer, the expenses of noxious weed control or eradication along public highways in the county, and any other expenses incurred in the operation of a county noxious weed control or eradication program. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
2. The commissioner shall allocate the county share of any legislative appropriation for noxious weed control or eradication to the county weed

boards pursuant to a formula adopted by the commissioner, after consultation with county weed boards. A county weed board may not receive more than ~~one-half~~ seventy-five percent of the board's actual cost-share expenditures for noxious weed control or eradication from any legislative appropriation, unless the commissioner in consultation with the county weed board determines a noxious weed is seriously endangering areas of a county or the state.

3. To be eligible to receive landowner assistance cost-share dollars a county must levy at least three mills for noxious weed control or eradication. The request for cost-share dollars must be initiated by a county weed board by submitting a voucher and documentation. Upon approval of the voucher and documentation by the commissioner, the office of management and budget shall make the payment out of funds appropriated for the control or eradication of noxious weeds.
4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost.

**SECTION 2. AMENDMENT.** If House Bill No. 1026 does not become effective, section 63-01.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

**63-01.1-07.6. Funding of city programs.**

1.
  - a. The governing body of the city may pay expenses from the city general fund to further the city's noxious weed control program under this chapter, including to provide noxious weed control along public highways in the city.
  - b. The city weed board may certify annually to the governing body of the city a tax, not to exceed two mills on the taxable valuation of all taxable property in the city, to further its noxious weed control program under this chapter.
  - c. The governing body of the city may by majority vote certify up to two additional mills on the taxable valuation of all taxable property in the city to further its noxious weed control program under this chapter.
  - d. The governing body of the city shall levy the tax.
  - e. The city treasurer shall hold all taxes levied and collected under this section in a separate fund known as the noxious weed control or eradication fund. Money in the fund must be used to pay the salaries and expenses of the city weed board and the city weed control officer, the expenses of noxious weed control along public highways in the city, and any other expenses incurred in the operation of a city noxious weed control program. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
2. The commissioner shall allocate any legislative appropriation for noxious weed control or eradication to the city weed boards, pursuant to a formula adopted by the commissioner, after consultation with city

weed boards. A city weed board may not receive more than ~~one-half~~ seventy-five percent of the city's actual cost-share expenditures for noxious weed control or eradication from any legislative appropriation, unless the commissioner in consultation with the city weed board determines a noxious weed is seriously endangering areas of a city.

3. To be eligible to receive state cost-share dollars, a city must levy at least three mills for noxious weed control or eradication. The request for cost-share dollars must be initiated by a city weed board by submitting a voucher and documentation to the commissioner. Upon approval of the voucher and documentation by the commissioner, the office of management and budget shall make the payment out of funds appropriated for the control or eradication of noxious weeds.
4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost.

**SECTION 3. AMENDMENT.** Section 16 of House Bill No. 1026, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**SECTION 16. State appropriations for noxious weed control - ~~County share~~ Distribution - Determination.**

1. The commissioner shall consult with the county and city weed boards and develop a method for the distribution to county and city weed boards of all moneys appropriated by the state for noxious weed control, other than the landowner assistance grants provided for in section 17 of this Act.
2. The method must:
  - a. Limit the amount that any county or city weed board is entitled to receive under this section to ~~fifty~~ seventy-five percent of the board's actual expenditures under this section; and
  - b. Allow the commissioner to waive the limit provided for in this subsection if the commissioner determines that a noxious weed is seriously endangering areas of ~~the~~ a county, a city, or the state.

**SECTION 4. County and city weed boards - Control of invasive species - Acceptance of funds.**

1. If a county or a city weed board determines that an invasive species is present within its jurisdiction, the weed board shall notify the commissioner.
2. a. If funds for the control of invasive species are available to the commissioner, the commissioner may forward the funds to a weed board for the purpose of controlling the invasive species on public land and assisting private landowners in their efforts to voluntarily control the invasive species provided:

- (1) The commissioner determines that, without intervention, the invasive species is likely to become a noxious weed during the ensuing five-year period; and
  - (2) The weed board files a plan with the commissioner detailing the manner in which and the time within which the funds are to be expended.
- b. Notwithstanding any other law, a county or a city weed board may accept funds under this subsection and implement a plan, approved by the commissioner, for the control of invasive species within its jurisdiction.
3. In addition to any funds available from the commissioner, a county or a city weed board may accept funds from any other source to control invasive species within its jurisdiction.
4. For purposes of this section, an invasive species means a plant species that has been introduced into this state and which the North Dakota state university extension service determines has caused or is likely to cause:
  - a. Economic harm;
  - b. Environmental harm; or
  - c. Harm to human health.

**SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND - INVASIVE SPECIES CONTROL.** The agriculture commissioner may use up to \$50,000 of the amount available to the commissioner from the environment and rangeland protection fund, in accordance with House Bill No. 1009, as approved by the sixty-first legislative assembly, for the purpose of controlling invasive species as provided by section 4 of this Act.

Approved May 1, 2009  
Filed May 5, 2009

# WORKERS' COMPENSATION

## CHAPTER 607

### HOUSE BILL NO. 1061

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 3 of section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definition of artificial members as it relates to compensable injuries; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>289</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Artificial members" includes ~~only such devices as are substitutes for, and not mere aids to,~~ a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. The term does not include A prescriptive device includes prescription eyeglasses or, contact lenses unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker or requires a change in existing prescription, dental braces, and orthopedic braces.

**SECTION 2. APPLICATION.** This Act applies to injuries that occur after July 31, 2009.

Approved March 19, 2009  
Filed March 24, 2009

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<sup>289</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1151, chapter 608, and section 4 of House Bill No. 1360, chapter 163.

**CHAPTER 608****HOUSE BILL NO. 1151**

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new section to chapter 65-03 of the North Dakota Century Code, relating to reporting requirements in safety grant programs; to amend and reenact subsection 31 of section 65-01-02 and sections 65-01-13, 65-03-04, and 65-04-15 of the North Dakota Century Code, relating to definition of wages, information fund, safety grant awards, and confidentiality of employer files for workforce safety and insurance purposes; and to repeal section 65-03-03 of the North Dakota Century Code, relating to rules for mine foremen.

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

<sup>290</sup> **SECTION 1. AMENDMENT.** Subsection 31 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

31. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.

**SECTION 2. AMENDMENT.** Section 65-01-13 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-13. Information fund - Continuing appropriation.** There is ~~hereby~~ created a fund to be known as the information fund: ~~Workforce safety and insurance within the workforce safety and insurance fund, to which the organization shall deposit into this fund~~ all moneys received from private citizens, businesses, associations, corporations, and limited liability companies for providing these entities with publications and statistical information concerning workforce safety and insurance matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to workforce safety and insurance to pay publication and statistical processing expenses incurred by the organization. ~~If on the first day of July in any year the amount of money in the information fund is more than ten thousand dollars, the amount in excess of ten thousand dollars must be transferred to the organization's general fund.~~

**SECTION 3. AMENDMENT.** Section 65-03-04 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>290</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1061, chapter 607, and section 4 of House Bill No. 1360, chapter 163.

**65-03-04. Safety programs - Continuing appropriation.** The organization shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. As a term of award of a grant under this section, a recipient authorizes the organization to disclose the name of the award recipient and the amount of the award received. Any funds deposited in the workforce safety insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

**SECTION 4.** A new section to chapter 65-03 of the North Dakota Century Code is created and enacted as follows:

**Safety grant programs - Reporting requirements.** The organization shall compile data relating to grants issued under this chapter. The organization shall report biennially to the legislative council.

**SECTION 5. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information.**

1. The information contained in an employer's file is confidential and not subject to ~~section 44-04-18~~ disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties; and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public.
2. An employer file includes all documents and data pertaining to a person that pays premium to the organization, except for information relating to a grant award under section 65-03-04 which the organization is specifically authorized to disclose or under section 65-03-04 which does not disclose payroll or premium information as provided in subsection 3.
3. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, delinquent, or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title, except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

4. The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency.
5. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization shall provide any relevant information to those officials for the purpose of administering their duties.
6. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

**SECTION 6. REPEAL.** Section 65-03-03 of the North Dakota Century Code is repealed.

Approved May 1, 2009  
Filed May 4, 2009

## CHAPTER 609

### SENATE BILL NO. 2071

(Senators J. Lee, Klein, Wanzek)  
(Representatives Ruby, N. Johnson)

AN ACT to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-03. Person Individual performing service for remuneration presumed an employee.**

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that a ~~person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
  - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
  - b. The individual is responsible for the maintenance and repair of the truck or tractor.
  - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
  - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
  - e. Income taxes are not withheld from the individual's compensation.
  - f. The individual generally determines the details and means of performing the services, in conformance with statutory or

regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

- g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 610****SENATE BILL NO. 2055**

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 1 of section 65-01-15.1 of the North Dakota Century Code, relating to the burden of proof under the workers' compensation firefighter's and law enforcement officer's presumption.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. 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 a bloodborne pathogen as defined by 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 partial disability or death unless the contrary is shown by competent evidence. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.~~

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 611****HOUSE BILL NO. 1464**  
(Representatives N. Johnson, Berg, Boe)  
(Senators Klein, Wanzek)

AN ACT to amend and reenact subsection 14 of section 54-44.3-20, section 54-57-01, subsection 1 of section 54-57-03, sections 65-01-16, 65-02-01, 65-02-03.3, 65-02-22, 65-02-33, 65-04-19.3, and 65-04-32, subdivision b of subsection 3 of section 65-05-29, and subsection 2 of section 65-05.1-08 of the North Dakota Century Code, relating to the workforce safety and insurance board, workforce safety and insurance administrative hearings, and workforce safety and insurance personnel; to repeal sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code, relating to the workforce safety and insurance personnel system and spending authority; and to declare an emergency.

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

<sup>291</sup> **SECTION 1. AMENDMENT.** Subsection 14 of section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

14. Officers ~~and employees~~ of workforce safety and insurance.

**SECTION 2. AMENDMENT.** Section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-57-01. Office of administrative hearings - Agency defined - Administrative agency defined.**

1. A state office of administrative hearings is created.
2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney at law in good standing, admitted to the bar in this state, and currently licensed by the state board of law examiners. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of

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<sup>291</sup> Section 54-44.3-20 was also amended by section 1 of House Bill No. 1067, chapter 511.

administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

4. The director of administrative hearings may employ the necessary support staff required by the office. Support staff must be classified employees.
5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of North Dakota human resource management services, including the salary to be paid for each position or category of position.
6. The director shall file a report with the governor and the state advisory council for administrative hearings not later than the first day of December of each odd-numbered year. The report must provide information regarding all administrative hearings conducted by the office of administrative hearings during the previous biennium. The report must provide information regarding meeting case processing guidelines for each agency, the cost of hearings for each agency, the decisions issued for each agency, and the results of the office of administrative hearings' service survey.
7. In this chapter, unless the context or subject matter otherwise requires, "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government whether headed by an appointed or elected official.
- 7- 8. In this chapter, unless the context or subject matter otherwise requires, "administrative agency" means that term as defined in section 28-32-01.

**SECTION 3. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, ~~workforce safety and insurance~~, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted

by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

<sup>292</sup> **SECTION 4. AMENDMENT.** Section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-16. Decisions by organization - Disputed decisions.** The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the

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<sup>292</sup> Section 65-01-16 was also amended by section 1 of House Bill No. 1201, chapter 612.

North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the office of independent review under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the office of independent review mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
9. ~~Within sixty days after receiving the recommended findings, conclusions, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
40. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.
44. 10. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.
42. ~~This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.~~

**SECTION 5. AMENDMENT.** Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-01. Workforce safety and insurance - Director - Division directors.** The organization must be maintained for the administration of this title. ~~The board shall appoint the director of the organization. The director is subject to the supervision and direction of the board and serves at the pleasure of the board. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.~~

**SECTION 6. AMENDMENT.** Section 65-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-03.3. Board - Powers and duties.** The board may authorize the organization to transfer moneys between line items within the organization's budget. The board shall:

1. ~~Appoint a director on a nonpartisan, merit basis.~~
2. ~~Set the compensation of the director.~~
3. ~~Ensure a proper response to any audit recommendations.~~
4. ~~Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.~~
5. ~~Prepare, with the assistance of the organization, an organization budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The organization shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.~~
6. ~~Assist the organization in developing and submitting a budget, responding to any audit recommendations, formulating policies, and discussing problems issues related to the administration of the organization, including the determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services, while ensuring impartiality and freedom from political influence.~~
7. ~~2. Incorporate Recommend principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.~~
8. ~~3. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.~~
4. ~~Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.~~
5. ~~Provide formal recommendations to the governor regarding legislation that affect the organization.~~
6. ~~Provide formal recommendations to the governor regarding the fund's investment allocation.~~

**SECTION 7. AMENDMENT.** Section 65-02-22 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-22. Hearing officer - Qualifications - Location.** A hearing officer designated by the ~~organization office of administrative hearings~~ under chapter 28-32 must be ~~a person an individual~~ licensed to practice law in this state. A hearing officer ~~designated by the organization~~ may not maintain an office within the organization from which the hearing officer conducts daily business. ~~This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the organization.~~

**SECTION 8. AMENDMENT.** Section 65-02-33 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-33. Occupational health and preventive medicine programs - Continuing appropriation.** ~~Upon approval of the board, the~~ The organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the workforce and insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

**SECTION 9. AMENDMENT.** Section 65-04-19.3 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-19.3. Premium calculation programs - Authority.** ~~Upon approval of its board of directors, the~~ The organization may create and implement actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section are not subject to title 28-32 and may include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

**SECTION 10. AMENDMENT.** Section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-32. Decisions by organization - Disputed decisions.** Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section 65-05-07.2:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the date of service to file a written petition for reconsideration. The request must state specifically the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the

organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings of fact, conclusions of law, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
6. ~~Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
7. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.

<sup>293</sup> **SECTION 11. AMENDMENT.** Subdivision b of subsection 3 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

- b. An adjudication by the organization or by order of ~~the board~~ of any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

**SECTION 12. AMENDMENT.** Subsection 2 of section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount

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<sup>293</sup> Section 65-05-29 was also amended by section 1 of House Bill No. 1063, chapter 626.

payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the ~~board's~~ organization's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The ~~board~~ organization, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

**SECTION 13. REPEAL.** Sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code are repealed.

**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 612****HOUSE BILL NO. 1201**  
(Representative Keiser)

AN ACT to amend and reenact subsections 6 and 7 of section 65-01-16 and section 65-02-27 of the North Dakota Century Code, relating to changing the name of the workforce safety and insurance office of independent review.

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

<sup>294</sup> **SECTION 1. AMENDMENT.** Subsections 6 and 7 of section 65-01-16 of the North Dakota Century Code are amended and reenacted as follows:

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the ~~office of independent decision review office~~ under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the ~~office of independent decision review office~~ mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

**SECTION 2. AMENDMENT.** Section 65-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-27. Office of independent Decision review office.** The organization's ~~office of independent decision review office~~ is established. The ~~office of independent decision review office~~ is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The ~~office of independent decision review~~ ~~must office~~ ~~shall~~ provide assistance to a ~~worker an employee~~ who has filed a claim, which may include acting on behalf of a ~~worker an employee~~ who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing a ~~worker an employee~~ of the effect of decisions made by the organization, ~~the worker an employee~~, or an employer under this title. The ~~office of independent decision review office~~ shall provide assistance to ~~workers employees~~, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The organization shall employ a director of the ~~office of independent decision review office~~ and other personnel determined to be necessary for the administration of the office. A person employed to administer the ~~office of independent decision review office~~ may not act as an attorney for a ~~worker an employee~~. The organization may not pay attorney's fees to an attorney who represents a ~~worker an employee~~ in a disputed claim before the organization unless the ~~worker employee~~ has first attempted to resolve the dispute through the ~~office of~~

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<sup>294</sup> Section 65-01-16 was also amended by section 4 of House Bill No. 1464, chapter 611.

independent decision review office. A written request for assistance by a worker an employee who contacts the office of independent decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the worker employee, sent by regular mail, that the office of independent review's decision review office's assistance to the worker employee is completed. The information contained in a file established by the office of independent decision review office on a worker's an employee's disputed claim, including communications from a worker an employee, is privileged and may not be released without the worker's employee's permission. Information in the file containing the notes or mental impressions of office of independent decision review office staff is confidential and may not be released by the office of independent decision review office.

Approved March 24, 2009

Filed March 24, 2009

**CHAPTER 613****HOUSE BILL NO. 1525**

(Representatives Amerman, J. Kelsh, Wolf)  
(Senator Pomeroy)

AN ACT to provide for a workforce safety and insurance study of post-retirement benefits within the workers' compensation system.

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

**SECTION 1. POST-RETIREMENT BENEFITS STUDY.** During the 2009-10 interim, workforce safety and insurance shall study the additional benefits payable benefit structure that comprises the post-retirement benefits available to an individual whose disability benefits end at the time of social security retirement eligibility. The study must identify the advantages and disadvantages of the current system to workers' compensation benefit recipients. The study must include recommendations on whether changes are necessary and the cost of any proposed changes. Before August 1, 2010, workforce safety and insurance shall report the results of the study to the legislative council's workers' compensation review committee.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 614

### HOUSE BILL NO. 1035

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact subdivision a of subsection 1 of section 65-02-03.1 and section 65-04-02 of the North Dakota Century Code, relating to the workforce safety and insurance board of directors and workforce safety and insurance reserves.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was ~~at least ten thousand dollars~~ but less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at large representatives. Except for the employer at large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.

**SECTION 2. AMENDMENT.** Section 65-04-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-04-02. Reserves - Surplus.**

1. The organization shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The discount rate used in evaluating the financial reserves may not exceed six percent. The level of financial reserves plus available surplus determined as of June thirtieth of each year must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve.
2. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.
4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.
5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.
6. For the purposes of this section, "available surplus" means net assets as stated on the statement of net assets of the organization, but does not include funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the legislative assembly.
7. The independent annual financial audit of the organization must report the organization's financial reserves.

Approved April 30, 2009  
Filed May 4, 2009

## CHAPTER 615

### SENATE BILL NO. 2058

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-21.1 and subsection 3 of section 65-05-28 of the North Dakota Century Code, relating to a distinction between workers' compensation independent medical examinations and independent medical reviews.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-21.1. Licensure required for psychologists and physicians performing utilization review.** Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of medical examiners. This requirement does not apply to psychologists or physicians conducting independent medical examinations or independent medical reviews under section 65-05-28.

<sup>295</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by a one or more duly qualified ~~doctor~~ or doctors designated or approved by the organization. ~~The~~ An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
  - a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.

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<sup>295</sup> Section 65-05-28 was also amended by section 1 of Senate Bill No. 2056, chapter 623, and section 1 of Senate Bill No. 2431, chapter 624.

- b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.

Approved March 19, 2009

Filed March 19, 2009

## CHAPTER 616

### HOUSE BILL NO. 1037

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact sections 65-02-23 and 65-02-30 of the North Dakota Century Code, relating to the independent performance evaluation of workforce safety and insurance.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation.** The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

<sup>296</sup> **SECTION 2. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.** Biennially, the director shall request the state auditor to select a firm with extensive expertise in ~~workforce safety and insurance workers' compensation practices~~ and standards to complete a performance evaluation of the functions and operations of the organization during that biennium. This may not be construed to require the firm to be a certified public accounting firm. ~~As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate departments of the organization to determine whether the organization is providing quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws.~~ The firm's report

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<sup>296</sup> Section 65-02-30 was also amended by section 95 of House Bill No. 1436, chapter 482.

must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative council's legislative audit and fiscal workers' compensation review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation the governor. The director shall provide a copy of the performance evaluation report to the state auditor. ~~The organization shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section~~ Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 617****SENATE BILL NO. 2059**

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to create and enact two new sections to chapter 65-02 of the North Dakota Century Code, relating to workforce safety and insurance payment of an injured employee's attorney's fees for a case review or settlement proposal; to provide for a report to the legislative assembly; and to provide for application.

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

**SECTION 1.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Attorney's fees for legal review in preparation for rehearing of an administrative order.**

1. The organization shall pay an injured employee's attorney for the fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by the organization under section 65-01-16 and chapter 28-32. The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08. To be eligible for payment of attorney's fees and costs under this section, before consulting the attorney the injured employee must first receive a certificate of completion from the office of independent review, and the attorney consultation must take place after the certificate of completion is issued but before the rehearing is conducted.
2. Payment of attorney's fees and costs under this section is limited as follows:
  - a. An injured employee may consult with one attorney per administrative order;
  - b. The payment amount for attorney's fees may not exceed a total of five hundred dollars per injured employee, per administrative order;
  - c. The payment amount for costs may not exceed a total of one hundred fifty dollars per injured employee, per administrative order;
  - d. The attorney must be licensed to practice law in North Dakota and must be in good standing; and
  - e. The organization may deny fees and costs the organization determines to be excessive or frivolous.

3. To obtain payment under this section, an attorney shall submit to the organization a fee statement. The fee statement must be signed by the attorney and must include:
  - a. The name of the injured employee;
  - b. The workforce safety and insurance claim number;
  - c. The date of the billing statement;
  - d. A summary of the basic legal issue;
  - e. The date of each service or charge being billed;
  - f. An itemization and a reasonable description of the legal work performed for each service or charge;
  - g. The time and amount billed for each item; and
  - h. The total time and amounts billed.
4. Under this section, the organization shall reimburse the following costs:
  - a. Actual postage, if postage exceeds three dollars per parcel;
  - b. Actual toll charges for long-distance telephone calls;
  - c. Copying charges at eight cents per page;
  - d. Mileage and other expenses for reasonable and necessary travel, including per diem, all of which are to be paid in the amounts paid state officials as provided under sections 44-08-04 and 54-06-09; and
  - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars.
5. Under this section, the organization may not reimburse the following costs:
  - a. Express mail;
  - b. Additional copies of transcripts;
  - c. Costs incurred to obtain medical records;
  - d. Copy charges for documents provided by the organization; and
  - e. Costs for typing and clerical or office services.

**SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Attorney's fees for legal review of proposed settlement.** The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is

offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 1 of this Act apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 1 of this Act. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal.

**SECTION 3. REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.**

Workforce safety and insurance shall report the number of injured employees per year that were eligible for payment of attorney's fees and costs under section 1 of this Act to the senate and house industry, business and labor standing committees during the sixty-second legislative assembly.

**SECTION 4. APPLICATION.**

Section 1 of this Act applies to injured employees who have received a certificate of completion from the office of independent review on or after the effective date of this Act. Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act.

Approved April 30, 2009

Filed May 1, 2009

**CHAPTER 618****HOUSE BILL NO. 1036**

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact section 65-04-01 of the North Dakota Century Code, relating to the calculation of workforce safety and insurance premiums.

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

**SECTION 1. AMENDMENT.** Section 65-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-01. Classification of employments - Premium rates - Requirements.**

1. The organization shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of the classifications sufficiently high to provide for:
  - a. The payment of the expenses of administration of the organization;
  - b. The payment of compensation according to the provisions and schedules contained in this title; and
  - c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the organization shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.
3. The organization shall establish premium rates annually on an actuarial basis. The statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.
4. Before the effective date of any premium rate change, including a change in the minimum premium, the organization shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the organization under this subsection.

Approved March 19, 2009  
Filed March 24, 2009

## CHAPTER 619

### HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 10 of section 65-05-08, sections 65-05-08.2, 65-05-09, and 65-05-10, subsection 4 of section 65-05-15, and sections 65-05-17 and 65-05-26 of the North Dakota Century Code, relating to workers' compensation dependency allowances, preacceptance disability benefits, maximum disability benefits, travel and other reimbursement, death benefits, and burial expenses; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 10 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ~~ten~~ fifteen dollars per week per child. ~~Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.~~

**SECTION 2. AMENDMENT.** Section 65-05-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-08.2. Preacceptance disability benefits.** If, after receiving a claim for benefits, the organization determines that more information is needed to process the claim, but that the information in the file indicates the injured employee is more likely than not entitled to disability benefits, the organization may pay preacceptance disability benefits equal to the ~~minimum~~ weekly disability benefit allowed under section 65-05-09. The organization may continue to pay preacceptance disability benefits to the employee during the period the claim is pending, unless the injured employee is not cooperating with requests from the organization for additional information needed to process the claim. The organization may not pay more than sixty days of preacceptance benefits. The organization may only recover a payment made to an injured employee under this section if that recovery is allowed under section 65-05-33. There is no appeal from an organization decision not to pay preacceptance disability benefits.

<sup>297</sup> **SECTION 3. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit.** If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the employee,

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<sup>297</sup> Section 65-05-09 was also amended by section 1 of House Bill No. 1064, chapter 621.

subject to a minimum of sixty percent and a maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the organization benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

**SECTION 4. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-10. Partial disability - Weekly benefit.** If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed the preinjury weekly wage of the employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may

be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

**SECTION 5. AMENDMENT.** Subsection 4 of section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

4. When an injured worker is entitled to benefits on an aggravation basis, the organization shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, travel, other personal reimbursement for seeking and obtaining medical care under section 65-05-28, and dependency allowance on a one hundred percent basis.

**SECTION 6. AMENDMENT.** Section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-17. Weekly compensation allowances for death claims.** If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified:

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of "child" in this title. If there is more than one guardian for the children who survive the decedent, the organization shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed ~~two~~ three hundred ~~fifty~~ thousand dollars.
2. To each child of the deceased employee, the amount of ~~ten~~ fifteen dollars per week. This rate must be paid to each eligible child regardless of the date of death. The organization may pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation.
3. In addition to the payments provided under subsections 1 and 2, a payment in the sum of ~~twelve~~ two thousand five hundred dollars to the decedent's spouse or the guardian of the children of the decedent and ~~four~~ eight hundred dollars for each dependent child. If there is more than one guardian of the decedent's surviving children, the ~~twelve~~ two thousand five hundred dollars must be divided equally among the children and paid to the children's guardians.

**SECTION 7. AMENDMENT.** Section 65-05-26 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-26. Burial expenses.** If death benefits are payable under section 65-05-16, the fund shall pay to the facility handling the funeral arrangements of the

deceased employee burial expenses not to exceed ~~six~~ ten thousand ~~five hundred~~ dollars.

**SECTION 8. APPLICATION.** The increase in section 1 of this Act applies to employees eligible for a dependency allowance on or after the effective date of this Act and applies only to dependency allowance payments made on or after the effective date of this Act. The amendment in section 2 of this Act applies to employees who have incurred claimed injuries on or after the effective date of this Act. The increases in the maximums in section 3 and section 4 of this Act apply to employees who have incurred compensable injuries on or after the effective date of this Act. The amendment in section 5 of this Act applies to expenses incurred by employees on or after the effective date of this Act. The increases in section 6 and section 7 of this Act apply to employee deaths resulting from injuries that occur on or after the effective date of this Act.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 620

### HOUSE BILL NO. 1561

(Representatives Schneider, Gruchalla, Kasper)  
(Senator Wanzek)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to a treating doctor's opinion in workers' compensation decisions; to provide for application; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

##### Treating doctor's opinion.

1. If the organization does not give an injured employee's treating doctor's opinion controlling weight, the organization shall establish that the treating doctor's opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with the other substantial evidence in the injured employee's record based on one or more of the following factors:
  - a. The length of the treatment relationship and the frequency of examinations;
  - b. The nature and extent of the treatment relationship;
  - c. The amount of relevant evidence in support of the opinion;
  - d. How consistent the opinion is with the record as a whole;
  - e. Appearance of bias;
  - f. Whether the doctor specializes in the medical issues related to the opinion; and
  - g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a doctor is an injured employee's treating doctor.

**SECTION 2. APPLICATION.** This Act applies only to claims filed on or after the effective date of this Act.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 621****HOUSE BILL NO. 1064**

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 65-05-09, 65-05.2-01, and 65-05.2-02 of the North Dakota Century Code, relating to cost-of-living adjustments for workers' compensation total disability benefits; to provide for application; to provide an effective date; and to declare an emergency.

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

<sup>298</sup> **SECTION 1. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit.** If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a maximum of one hundred ten percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the organization benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of ~~twelve~~ three consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

**SECTION 2. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-01. Eligibility for supplementary benefits.**

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<sup>298</sup> Section 65-05-09 was also amended by section 3 of House Bill No. 1101, chapter 619.

1. For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of ~~seven~~ three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to temporary total disability benefits, permanent total disability benefits, or death benefits.
2. For claims filed after December 31, 2005, a workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

**SECTION 3. AMENDMENT.** Section 65-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-02. Supplementary benefits - Amount.**

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly temporary total disability benefit, permanent total disability benefit, or death benefit, equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The organization shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The organization shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

**SECTION 4. APPLICATION.** Sections 2 and 3 of this Act apply to temporary total disability recipients or permanent total disability recipients who filed a claim before January 1, 2006, and whose first date of eligibility for supplementary benefits under this Act occurs after June 30, 2009.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2009

Filed April 9, 2009

## CHAPTER 622

### SENATE BILL NO. 2057

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 11 of section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent partial impairment awards for loss of vision; to provide for application; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 11 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:
 

For amputation of a thumb	permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	permanent impairment multiplier of 28
For amputation of the first finger	permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	permanent impairment multiplier of 22
For amputation of the second finger	permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	permanent impairment multiplier of 14
For amputation of the third finger	permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	permanent impairment multiplier of 16
For amputation of the fourth finger	permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	permanent impairment multiplier of 12
For amputation of the leg at the hip	permanent impairment multiplier of 234

For amputation of the leg at or above the knee	permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	permanent impairment multiplier of 150
For amputation of a great toe	permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	permanent impairment multiplier of 18
For amputation of any other toe	permanent impairment multiplier of 12
For loss of an eye	permanent impairment multiplier of 150
<u>For the loss of vision of an eye which equals or exceeds 20/200 corrected</u>	<u>permanent impairment multiplier of 100</u>

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

**SECTION 2. APPLICATION.** This Act applies to injuries that occur on or after the effective date of this Act.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 623****SENATE BILL NO. 2056**

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 2 of section 65-05-28 of the North Dakota Century Code, relating to workers' compensation mileage reimbursement for injured employees' medical travel; and to provide for application.

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

<sup>299</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. Providing further that:
  - a. No payment Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
  - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of meals and lodging, if actual cost is less;
  - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
  - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and

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<sup>299</sup> Section 65-05-28 was also amended by section 2 of Senate Bill No. 2058, chapter 615, and section 1 of Senate Bill No. 2431, chapter 624.

- e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

**SECTION 2. APPLICATION.** This Act applies to travel that takes place on or after the effective date of this Act.

Approved March 19, 2009

Filed March 19, 2009

**CHAPTER 624****SENATE BILL NO. 2431**

(Senator O'Connell)

AN ACT to amend and reenact subsection 3 of section 65-05-28 of the North Dakota Century Code, relating to independent medical examinations required by workforce safety and insurance.

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

<sup>300</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

3. The organization may at any time require an employee to submit to an independent medical examination by a duly qualified doctor or doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to designate a duly qualified doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination or later review the written report of the doctor performing the independent medical examination, if procured and paid for by that employee. Providing further that:
  - a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
  - b. The employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>300</sup> Section 65-05-28 was also amended by section 1 of Senate Bill No. 2056, chapter 623, and section 2 of Senate Bill No. 2058, chapter 615.

**CHAPTER 625****SENATE BILL NO. 2432**  
(Senator O'Connell)

AN ACT to amend and reenact subsections 1 and 3 of section 65-05-28.2 of the North Dakota Century Code, relating to preferred providers for work-related injuries.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 65-05-28.2 of the North Dakota Century Code are amended and reenacted as follows:

1. During the first ~~sixty~~ thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury.
  
3. After ~~sixty~~ thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 626****HOUSE BILL NO. 1063**

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-29 of the North Dakota Century Code, relating to workers' compensation coverage for preexisting conditions; and to provide for application.

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

<sup>301</sup> **SECTION 1. AMENDMENT.** Section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-29. Assignment of claims void - Claims exempt.**

1. Any assignment of a claim for compensation under this title is void. All compensation and claims therefor are exempt from claims of creditors except any of the following:
  - ~~1-~~ a. A child support obligation ordered by a court of competent jurisdiction.
  - ~~2-~~ b. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service North Dakota during the period for which the claimant is found eligible for temporary total or permanent total disability benefits, not to exceed the disability award actually made by the organization.
  - ~~3-~~ c. A claim by the organization for any payments made due to:
    - ~~a-~~ (1) Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;
    - ~~b-~~ (2) An adjudication by the organization or by order of the board or any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

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<sup>301</sup> Section 65-05-29 was also amended by section 11 of House Bill No. 1464, chapter 611.

- e. (3) Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the organization; or
  - e. (4) Overpayment due to application of section 65-05-09.1.
2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a medical expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
- (1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
  - (2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
- b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

**SECTION 2. APPLICATION.** This Act applies to medical expenses incurred on or after the effective date of this Act.

Approved April 15, 2009  
Filed April 15, 2009

**CHAPTER 627****HOUSE BILL NO. 1455**

(Representatives Thorpe, Boucher, Ekstrom, Zaiser)  
(Senator Bakke)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation benefits for surviving spouse of permanently and totally disabled injured employee; and to provide for application.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Death of permanently and totally disabled employee - Surviving spouse.**  
In the case of the death of an injured employee who is receiving permanent total disability benefits, or additional benefits payable, if the injured employee was permanently and totally disabled for at least ten years and was married to the surviving spouse for at least ten years, the decedent's surviving spouse is eligible to receive no more than six months of the decedent's permanent total disability benefits, supplementary benefits, and additional benefits payable in the same manner as the deceased spouse would have been entitled to receive the benefits. A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16. The eligibility of the surviving spouse to receive benefits under this section terminates upon the remarriage of the surviving spouse.

**SECTION 2. APPLICATION.** This Act applies to surviving spouses of workforce safety and insurance claimants who die on or after the effective date of this Act.

Approved March 24, 2009  
Filed March 24, 2009

**CHAPTER 628****SENATE BILL NO. 2433**  
(Senator O'Connell)

AN ACT to amend and reenact subsection 4 of section 65-05.1-04 of the North Dakota Century Code, relating to work searches by disabled workers.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, the employee is responsible to make a good-faith work trial or work search. If the employee fails to perform a good-faith work trial, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. If the employee meets the burden of proving that the employee made a good-faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 629

### HOUSE BILL NO. 1062

(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to workers' compensation rehabilitation services pilot programs; to amend and reenact section 65-05.1-06.1 of the North Dakota Century Code, relating to expansion of workers' compensation rehabilitation services; and to provide for a report to the legislative council.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>302</sup> **SECTION 1. AMENDMENT.** Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-05.1-06.1. Rehabilitation award.**

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to disability and vocational rehabilitation services.
2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
  - a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
  - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule.
  - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:

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<sup>302</sup> Section 65-05.1-06.1 was also amended by section 1 of Senate Bill No. 2419, chapter 630.

- (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or
  - (2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.
- d. Notwithstanding the one hundred four-week limit of subdivision c to facilitate the completion of a retraining program, the organization may award a rehabilitation extension allowance that may not exceed twenty weeks.
- e. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
- e- f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- f. g. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two months' disability benefit, to assist the employee with work search.
- g- h. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
- h- i. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the

employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.

- (2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual postinjury wage earnings, whichever is higher.
  - (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
  - (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
  - (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
  - (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
  4. If the appropriate priority option is subdivision e or f of subsection 4 of section 65-05.1-01 or subsection 6 of section 65-05.1-01, to assist with work search the organization may award an additional award. The additional award under this subsection is awarded at the organization's sole discretion and may not exceed an amount equal to two months of the employee's total disability benefits calculated under section 65-05-09.

**SECTION 2.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

**Rehabilitation services pilot programs - Reports - Data collection.**

1. The organization shall implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation

services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program.

2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, opportunities, and threats analysis; and employer and employee satisfaction information. The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22:
  - a. Preliminary reports on future pilot programs;
  - b. Status reports on current pilot programs; and
  - c. Final reports on completed pilot programs, including recommendations and proposed legislative changes necessary to implement recommendations.
  
3. The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:
  - a. The stage of rehabilitation services at which closure occurs;
  - b. The reason for the closure; and
  - c. Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings.

Approved March 19, 2009

Filed March 24, 2009

# CHAPTER 630

## SENATE BILL NO. 2419

(Senator O'Connell)

AN ACT to amend and reenact subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code, relating to workers' compensation vocational rehabilitation awards; and to provide for application.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>303</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The rehabilitation allowance must include an, as chosen by the employee, an additional ~~twenty-five~~ thirty percent of the rehabilitation allowance for expenses associated with maintaining a second domicile or for travel associated with attendance at a school or training institution when it is necessary for the employee to maintain ~~two~~ households, when it is necessary for the employee to maintain ~~two~~ households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule travel at least twenty-five miles [40.23 kilometers] one way. Travel must be calculated from the employee's residence to the school or training institution. If it is necessary for an employee to travel less than twenty-five miles one way to a school or training institution, the employee may qualify for an additional rehabilitation allowance as determined in accordance with the following schedule:

<u>Round-trip mileage</u>	<u>Percentage increase in rehabilitation allowance</u>
<u>Under 10 miles</u>	<u>0</u>
<u>10 to 30 miles</u>	<u>10</u>
<u>31 to 50 miles</u>	<u>20</u>

Travel must be calculated from the employee's residence to the school or training institution.

<sup>303</sup> Section 65-05.1-06.1 was also amended by section 1 of House Bill No. 1062, chapter 629.

**SECTION 2. APPLICATION.** This Act applies to new retraining programs beginning on or after the effective date of this Act and to existing retraining programs from the date of the first new semester following the effective date of this Act.

Approved April 22, 2009  
Filed April 23, 2009

# VETOED MEASURES

## CHAPTER 631

### SENATE BILL NO. 2018

(Appropriations Committee)  
(At the request of the Governor)

### CENTERS OF EXCELLENCE STATE TAX REVENUE IMPACT STUDY

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide an appropriation to the office of management and budget; to provide a contingent appropriation; to provide exemptions; to provide for transfers; to provide a continuing appropriation; to provide for legislative council studies; to provide reports to the budget section; to provide for the establishment of a centers of excellence fund; to create and enact a new subsection to section 15-69-01, a new section to chapter 54-18, a new section to chapter 54-44.1, and a new section to chapter 54-60 of the North Dakota Century Code, relating to definitions relating to centers of excellence, an annual transfer from the state mill and elevator association, the establishment of a searchable database, and the division of workforce development's strategic plan and the North Dakota workforce development council; to amend and reenact subsection 1 of section 15-69-02, subsections 1, 2, and 3 of section 15-69-04, subsections 1, 3, 4, and 5 of section 15-69-05, subsection 2 of section 54-60-16, and section 54-60-17 of the North Dakota Century Code, relating to centers of excellence, the international business and trade office, and higher education internships and work experience opportunities; to provide an expiration date; and to declare an emergency.

VETO

May 8, 2009

The Honorable Jack Dalrymple  
President  
North Dakota Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2018

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 24 of Senate Bill 2018 and return it to the Senate.

Section 24 unnecessarily duplicates studies and analyses already done by the Department of Commerce and independent economists. The Department of

Commerce conducted an external study that covered similar information proposed in this section during the current biennium and will do another study next biennium. In fact, Senate Bill 2018 already includes a best practices review of the Centers of Excellence program, which the Department of Commerce will expand to cover the information proposed by Section 24.

The State Auditor does fiscal and performance audits of agencies and programs, but this legislation calls for an economic impact study, which is not a function of the Auditor's Office. The State Auditor would have had to hire an outside expert consultant to do the study, which is exactly what the Department of Commerce has already done and will continue to do. Furthermore, the legislation neither authorizes nor appropriates any money to the State Auditor for such a purpose. Finally, the State Auditor already has authority to audit any independent economic analysis commissioned by the Department of Commerce, which is the State Auditor's role.

For these reasons, I have vetoed Section 24 of Senate Bill 2018.

Sincerely,

John Hoeven  
Governor

Disapproved May 8, 2009  
Filed May 11, 2009

NOTE: For the full text of Senate Bill No. 2018, including section 24, see chapter 46.

**CHAPTER 632****HOUSE BILL NO. 1015**

(Appropriations Committee)  
(At the request of the Governor)

**BUDGET SECTION AND STATE EMPLOYEE REPORTS**

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption; to provide for various transfers; to create and enact section 8 to chapter 160 of the 2007 Session Laws, a new section to chapter 54-27, and paragraph 5 to subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to contingent distributions of grant assistance money, the allocation of funds to certain coal-producing counties, and vacant state employee positions; to amend and reenact sections 18-05.1-01, 18-05.1-02, and 18-05.1-03, subdivision s of subsection 3 of section 32-12.2-02, sections 50-24.5-04, 54-06-08.2, 54-21-24, and 54-24-21.1, and subdivision d of subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to payment from the firefighters death benefit fund, the reciprocal licensure and classification system to carry a firearm or dangerous weapon concealed, the personal needs allowance for individuals in basic care facilities, leasing of office space by state entities, liability of the state, and credit card fees charged by state agencies; to amend and reenact sections 1 and 2 of House Bill No. 1350 and subsection 1 of section 3 of Senate Bill No. 2012, as approved by the sixty-first legislative assembly, relating to the Great Plains applied energy technology center and weather-related transportation funding; to provide an appropriation for a statewide salary equity pool; to establish a statewide salary equity pool; to provide for budget section reports; to provide for a transfer of appropriation authority; to limit the number of full-time equivalent positions; to provide legislative intent; to provide for a legislative council study; to provide an appropriation to the department of emergency services; to provide an appropriation to the department of public instruction; to provide an appropriation for the tobacco prevention and control executive committee; to provide for a biennial budget; to restrict expenditures from the water development trust fund; to provide for a report to the legislative council; to provide for retroactive application; to provide an effective date; and to declare an emergency.

## VETO

May 11, 2009

The Honorable David Monson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1015

Dear Speaker Monson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015 and returned it to the House.

Section 23 is unconstitutional because it requires executive branch officials to seek prior approval for basic managerial affairs from a subset of the Legislature. This requirement violates the inherent authority of the executive branch to manage state agencies.

The role of the legislative branch is to deliberate upon policies and principles to be adopted in the future and the executive branch is charged with administering those policies and principles. Verry v. Trenbeath, 148 N.W.2d 567 (N.D. 1967). If enacted, the budget section would have to review and approve hundreds of funding requests each quarter that would typically be handled by statewide elected officials and agency directors. This would prohibit elected officials and agency managers from effectively responding to changing public needs and properly managing their agencies.

Section 23 would also place North Dakota agencies in violation of the National Fair Labor and Standards Act, which require agencies to pay annual leave and sick leave to the employee on a timely basis.

Section 28 and 29 require the Department of Commerce to seek budget section approval for a specific building that the full Legislative Assembly has approved and set criteria for its funding. The Supreme Court has said except "as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including to a subset of its members ...." Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).

The Legislature may delegate to a body certain powers to ascertain facts; however, the full "Legislature must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts." Stutsman County v. State Historical Soc. of North Dakota, 371 N.W.2d 321, 327 (N.D. 1985). Sections 28 and 29 give the budget section unfettered veto power over the will of the full Legislature by granting authority far beyond the responsibility to determine that certain criteria or guidelines are being followed. See N.D.A.G. Opinion 2007-L-08.

Similarly, Section 31 usurps the authority of the full legislative body by transferring that authority to a small subset of the Legislature. Also, Section 31, as well as Section 32, prohibit the Governor from submitting proposed legislative initiatives to the Legislature for consideration and directly violate the Constitution. Article V, Section 7 of the North Dakota Constitution states the "governor shall

present ... any recommended legislation to every regular and special session of the legislative assembly." As the North Dakota Supreme Court has opined, "As all of the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969).

For these reasons, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015.

Sincerely,

John Hoeven  
Governor

Disapproved May 11, 2009  
Filed May 11, 2009

NOTE: For the full text of House Bill No. 1015, including sections 23, 28, 29, 31, and 32, see chapter 15.

**CHAPTER 633****SENATE BILL NO. 2001**

(Appropriations Committee)  
(At the request of the Legislative Council)

**LEGISLATIVE BUDGET COMMITTEE**

AN ACT providing an appropriation for defraying the expenses of the legislative branch of state government; to provide for transfers; to create and enact a new subsection to section 54-03.1-03 and a new section to chapter 54-35 of the North Dakota Century Code, relating to the agenda of the organizational session and to a legislative budget committee; to amend and reenact subdivision c of subsection 7 of section 54-03-20, section 54-44.1-04, subsection 7 of section 54-44.1-06, and section 54-44.1-07 of the North Dakota Century Code, relating to legislative leaders' monthly compensation, budget requests, and drafts of appropriation bills; to provide for applications and transfers; to provide for a legislative council study; and to provide an effective date.

VETO

May 11, 2009

The Honorable Jack Dalrymple  
President  
North Dakota Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2001

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 11, 12, 13, 14, and 15 of Senate Bill 2001 and returned it to the Senate.

Sections 11 and 12 circumvent Article IV, Section 7 and Article IV, Section 13 of the North Dakota Constitution by creating a full-time miniature legislature that disenfranchises the full legislative body.

North Dakota's Constitution created a citizen legislature that is limited to 80 legislative days. The creation of a mini-legislature, which would be comprised of 16 legislators picked by the majority leaders, would represent a fraction of the state's constituents to develop the state's budget.

Furthermore, since statehood the legislature has never developed and submitted its own budget to the full Assembly. The executive branch compiled and submitted the budget from 1889 through 1915 until the State Budget Board was created. That board, chaired by the Governor, was comprised of a majority of elected officials from the executive branch of statewide government. This process

continued until the modern budget process was created in 1965 with the advent of the Office of Management and Budget.

For 120 years, the state has recognized the benefit of presenting a budget which includes a broad perspective from an office holder who is elected statewide. Also, the entire body of the Legislature must have an equal opportunity to shape and consider the budget that represents all of the voters of North Dakota, rather than a budget submitted from only select legislators.

I veto sections 13, 14, and 15 because they intrude upon the function of the executive branch and violate the separation of governmental powers established by the North Dakota Constitution and American jurisprudence. These provisions directly violate the separation of powers doctrine and Article V, Section 7 of the North Dakota Constitution, which states the "governor shall present ... any recommended legislation to every regular and special session of the legislative assembly."

The function of the executive branch is to manage the affairs of the state and that includes the careful budgeting of resources. This budgeting process necessarily involves making recommendations to the Legislature that contain executive branch assessments of the amount and preferred allocation of resources needed to fulfill legislative policies. As the North Dakota Supreme Court has opined, "As all of the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969).

For these reasons, I have vetoed Sections 11, 12, 13, 14, and 15 of Senate Bill 2001.

Sincerely,

John Hoeven  
Governor

Disapproved May 11, 2009  
Filed May 11, 2009

NOTE: For the full text of Senate Bill No. 2001, including sections 11, 12, 13, 14, and 15, see chapter 29.

**CHAPTER 634****SENATE BILL NO. 2030**  
(Legislative Council)  
(Correctional Facility Review Committee)**PRISON CONSTRUCTION REVIEW COMMITTEE**

AN ACT providing an appropriation to the department of corrections and rehabilitation for the renovation and expansion project at the state penitentiary; to provide for a prison construction review committee; to provide legislative intent; and to declare an emergency.

VETO

May 11, 2009

The Honorable Jack Dalrymple  
President  
North Dakota Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2030

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 2 of Senate Bill 2030 and returned it to the Senate.

Section 2 would allow the budget section to approve a change in or expansion of the state penitentiary building project beyond what was authorized by the 61<sup>st</sup> Legislative Assembly.

During the 60<sup>th</sup> Legislative session, the Legislature approved the prison project subject to approval by the emergency commission and the budget section. The Attorney General later declared the requirement of budget section approval as unconstitutional as a violation of the separation of powers doctrine. N.D.A.G. 2007-L-08. Article X, Section 12 of the North Dakota Constitution reserves the exclusive right to appropriate monies to the full Legislature, and the North Dakota Supreme Court has said except "as otherwise provided in the constitution, the Legislature may not delegate legislative powers to others, including to a subset of its members ...." Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).

Section 2 suffers from the same constitutional infirmities as the process declared unconstitutional by the Attorney General last session. The budget section cannot change what the full legislative body has already authorized and appropriated.

For this reason, I have vetoed Section 2 of Senate Bill 2030.

Sincerely,

John Hoeven  
Governor

Disapproved May 11, 2009  
Filed May 11, 2009

Note: For the full text of Senate Bill No. 2030, including section 2, see chapter 54.

**CHAPTER 635****SENATE BILL NO. 2024**

(Appropriations Committee)  
(At the request of the Governor)

**RACING AND PARI-MUTUEL WAGERING  
REGULATION**

AN ACT to provide an appropriation for defraying the expenses of the racing commission; to create and enact two new sections to chapter 53-06.2 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to amend and reenact sections 53-06.2-02, 53-06.2-03, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14, 53-06.2-15, and 53-06.2-16 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to provide for a report to the legislative council; to provide for transition; and to provide an effective date.

VETO

May 18, 2009

The Honorable Jack Dalrymple  
President  
North Dakota Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2024

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Senate Bill 2024 and returned it to the Senate.

Senate Bill 2024 is unworkable according to both the Attorney General and Agriculture Commissioner, who are charged with executing its provisions.

The amendments to Senate Bill 2024, if enacted, would lead to statutory inconsistencies that would create enforcement ambiguities. According to the Attorney General, North Dakota Century Code sections 53-06.2-01(11) and 53-06.2-08(4) were not amended or repealed by Senate Bill 2024, which creates conflicts in definitions and regulatory oversight.

Senate Bill 2024 was a simple appropriation bill that was amended in conference committee with no public input from the Attorney General or Agriculture Commissioner, the two officials who would be charged with its implementation. The State, the Legislature, and the racing industry would be better served if all parties were able to craft legislation together that addressed the issues facing horse racing in North Dakota.

The vetoed sections of Senate Bill 2024 would not have taken effect for two years. As the Attorney General and Agriculture Commissioner suggest in the attached letter, the Legislative Council should study horse racing, its regulation, and its taxation in an interim committee so all parties can have input into proposed legislation to address the issues raised, but not solved, by Senate Bill No. 2024.

For these reasons, I vetoed Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Senate Bill 2024.

Sincerely,

John Hoeven  
Governor

Disapproved May 18, 2009  
Filed May 19, 2009

NOTE: For the full text of Senate Bill No. 2024, including sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, see chapter 52.

# INITIATED MEASURES APPROVED

## CHAPTER 636

### TOBACCO USE PREVENTION AND CONTROL PROGRAM

The initiated measure would add seven new sections to the North Dakota Century Code and amend N.D.C.C. section 54-27-25 to establish a tobacco prevention and control advisory committee and an executive committee; develop and fund a comprehensive statewide tobacco prevention and control plan; and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee.

#### **BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

**SECTION 1.** Seven new sections to the North Dakota Century Code are hereby created and enacted as follows:

#### **Definitions.** As used in this Act:

1. "Advisory committee" is the nine-member tobacco prevention and control advisory committee responsible to develop the comprehensive plan.
2. "Comprehensive plan" means a comprehensive statewide tobacco prevention and control program that is consistent with the centers for disease control best practices for comprehensive tobacco prevention and control programs and does not duplicate the work of the community health grant program created in chapter 23-28.
3. "Executive committee" means the three-member committee selected by the advisory committee and charged with implementation and administration of the comprehensive plan.
4. "Tobacco prevention and control fund." consists of all principal and interest of the tobacco prevention and control trust fund established by section 2 of this Act.

#### **Tobacco Prevention and Control Advisory Committee - Membership - Terms - Duties - Removal.**

1. The advisory board consists of nine North Dakota residents appointed by the governor for three year terms as follows:
  - a. A practicing respiratory therapist familiar with tobacco related diseases;
  - b. Four non-state employees that have demonstrated expertise in tobacco prevention and control;

- c. A practicing medical doctor familiar with tobacco related diseases;
  - d. A practicing nurse familiar with tobacco related diseases;
  - e. A youth between the ages of 14 and 21;
  - f. A member of the public with a previously demonstrated interest in fostering tobacco prevention and control.
2. The governor shall select the youth and public member independently; the respiratory therapist from a list of three nominations provided by the North Dakota society for respiratory care; the four tobacco control experts from a list of two nominations per member provided by the North Dakota public health association's tobacco control section; the medical doctor from a list of three nominations provided by the North Dakota medical association; and the nurse from a list of three nominations provided by the North Dakota nurses association. The governor must make the appointments within three weeks of receiving the respective list of nominees. If the governor fails to make an appointment within three weeks the association that provided the list of nominees shall select the committee member. In the initial appointments for the advisory committee, the governor shall stagger the terms of the members so that the terms of three members expire each fiscal year and that three members are appointed each year by June 30. Accordingly, the governor's initial appointments must, in some instances, be for terms less than 3 years. The governor shall fill vacancies for the unexpired term as provided in this section.
3. No individual may serve more than two consecutive three-year terms; however terms of less than three years are not considered in determining an individual's eligibility for reappointment.
4. A quorum of the advisory committee is required to conduct business, but the advisory committee may conduct a meeting with less than a quorum present. A quorum is a majority of the members of the committee. Any action taken requires a vote of the majority of the members present at the meeting.
5. The advisory board shall:
- a. Select the executive committee:
  - b. Fix the compensation of the advisory committee and the executive committee: however compensation may not exceed compensation allowed to the legislature. Advisory and executive committee members are entitled to reimbursement for mileage and expenses as provided for state officers in addition to any compensation provided;
  - c. Develop the initial comprehensive statewide tobacco prevention and control program that includes support for cessation interventions, community and youth interventions, and health communication; and

- d. Evaluate the effectiveness of the plan and its implementation and, prior to April 1 of each year; propose any necessary changes to the plan to the executive committee.
6. The governor may remove any member of the advisory committee for malfeasance in office, but the advisory committee is not subject to section 54-07-01.2.
7. No nomination to, or member of, the advisory committee shall have any past or current affiliation with the tobacco industry or any industry, contractor, agent, or organization that engages in the manufacturing, marketing, distributing, sale, or promotion of tobacco or tobacco related products.

**Executive Committee.** The executive committee of the advisory committee consists of three individuals selected by the advisory committee from its membership. The term of each member is for three years. The initial terms of the members must be staggered so that one member serves a three-year term, one member serves a two-year term and one member serves a one-year term. The determination of initial terms shall be by lot. No individual may serve more than two consecutive three-year terms; however terms of less than three years are not considered in determining an individual's eligibility for reappointment. The advisory committee shall fill vacancies for the unexpired term. An individual selected to serve on the executive committee is no longer eligible to serve if they are not a member of the advisory committee. The executive committee is responsible for the implementation and administration of the comprehensive plan, including the appropriateness of expenditures to implement the comprehensive plan. The executive committee may seek the counsel and advice of the advisory committee in implementing the plan, but the executive committee is the final decision maker.

**Powers of the Executive Committee.** To implement the purpose of this Act and, in addition to any other authority granted elsewhere in this Act, to support its efforts and implement the comprehensive plan the executive committee may employ staff and fix their compensation, accept grants, property, and gifts, enter contracts, make loans, provide grants, borrow money, lease property, provide direction to the state investment board for investment of the tobacco prevention and control fund, and take any action that any private individual, corporation, or limited liability company lawfully may do except as restricted by the provisions of this Act.

**Development of the Comprehensive Plan.** The advisory committee must develop the initial comprehensive plan within 180 days of the initial meeting of the advisory committee. The comprehensive plan must be funded at a level equal to or greater than the centers for disease control recommended funding level. Funding for the comprehensive plan must supplement and may not supplant any funding that in the absence of this Act would be or has been provided for the community health trust fund or other health initiatives.

**Conflict of Interest.** No member of the advisory committee or of the executive committee who has a direct and substantial personal or pecuniary interest in a matter before them may vote or take any action on that matter.

**Audit.** At least once a biennium, the executive committee shall provide for an independent review of the comprehensive plan to assure that the comprehensive plan is consistent with the centers for disease control best practices. The executive committee shall report the results of that review to the governor and to the state health officer on or before September 1 in each odd numbered year.

**SECTION 2. Amendment.** Section 54-27-25 of the 2005 supplement to the North Dakota Century Code is hereby amended and reenacted as follows:

**54-27-25. Tobacco settlement trust fund - Interest on fund - Uses.**

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under ~~sections subsection IX (c)(1) (payments) and X4 (calculation and disbursement of payments)~~ of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. ~~All Except as provided in subsection 2, moneys received by the state pursuant to the judgment and all moneys received by the state for enforcement of the judgment under subsection IX(c)(l) must be deposited in the fund.~~ Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund must be allocated as follows:
  4. a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund of which a minimum of eighty percent must be used for tobacco prevention and control.
  2. b. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.
  3. c. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.
2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section 1X (c) (2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be administered by the executive committee for the purpose of creating and implementing the comprehensive plan. If in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund a comprehensive plan, the treasurer shall transfer money from the water development trust fund to the tobacco prevention and control trust fund in an amount equal to the amount determined necessary by the executive committee to fund a comprehensive plan.

3. Transfers to the funds under this section must be made within thirty days of receipt by the ~~to~~ state ~~settlement trust fund~~.

Approved November 4, 2008

162,793 to 139,034

NOTE: This was measure No. 3 on the general election ballot.

**CHAPTER 637**  
**WORKFORCE SAFETY AND INSURANCE AGENCY**  
**ADMINISTRATION REGULATION**

This initiated measure would add two new sections to title 65 of the North Dakota Century Code providing for the appointment by the Governor of the director for the Workforce Safety and Insurance agency, the placement of its employees into the state personnel system, and for the appointment of independent administrative law judges to conduct hearings and make final decisions.

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

**SECTION 1.** Two new sections to Title 65 of the North Dakota Century Code are created and enacted as follows:

Workforce Safety and Insurance - Executive director - Governor to Appoint - Personnel. Notwithstanding any other provisions of law, the governor shall appoint a director of workforce safety and insurance who shall serve at the pleasure of the governor. The governor shall set the compensation and prescribe the duties of the director. Each employee of workforce safety and insurance must occupy a position in the classified service and must be subject to the provisions of the state personnel system provided in chapter 54-44.3.

Appointment of administrative law judges - Hearings. Notwithstanding any other provisions of law, workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law and orders. Rehearings must be conducted as hearings under chapter 28-32.

Approved November 4, 2008

196,531 to 96,457

NOTE: This was measure No. 4 on the general election ballot.

# INITIATED MEASURE DISAPPROVED

## CHAPTER 638

### STATE CORPORATE AND STATE INCOME TAX RATES

This initiated measure would amend sections 57-38-30 and 57-38-30.3 of the North Dakota Century Code by lowering the state corporate income tax rates by fifteen percent and the adjusted state individual income tax rates by fifty percent for tax years beginning after December 31, 2008.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first three thousand dollars of taxable income, at the rate of ~~two and six-tenths percent~~ two and twenty-one hundredths percent.
- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of ~~four and one-tenth percent~~ three and forty-eight hundredths percent.
- c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of ~~five and six-tenths percent~~ four and seventy-six hundredths percent.
- d. On all taxable income above twenty thousand dollars and not in excess of thirty thousand dollars, at the rate of ~~six and four-tenths percent~~ five and forty-four hundredths percent.
- e. On all taxable income above thirty thousand dollars, at the rate of ~~six and one-half percent~~ five and fifty-two hundredths percent.
2. A Corporation that has paid North Dakota Alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure,

shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

2. a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	<del>2.40%</del> <u>1.05%</u>
Over \$27,050 but not over \$65,550	<del>\$68.05</del> <u>\$284.03</u> plus <del>3.92%</del> <u>1.96%</u> of amount over \$27,050
Over \$65,550 but not over \$136,750	<del>\$2,077.25</del> <u>\$1,038.63</u> plus <del>4.34%</del> <u>2.17%</u> of amount over \$65,550
Over \$136,750 but not over \$297,350	<del>\$5,167.33</del> <u>\$2,583.67</u> plus <del>5.04%</del> <u>2.52%</u> of amount over \$136,750
Over \$297,350	<del>\$13,261.57</del> <u>\$6,630.79</u> plus <del>5.54%</del> <u>2.77%</u> of amount over \$297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	<del>2.40%</del> <u>1.05%</u>
Over \$45,200 but not over \$109,250	<del>\$949.29</del> <u>\$474.60</u> plus <del>3.92%</del> <u>1.96%</u> of amount over \$45,200
Over \$109,250 but not over \$166,500	<del>\$3,459.96</del> <u>\$1,729.98</u> plus <del>4.34%</del> <u>2.17%</u> of amount over \$109,250
Over \$166,500 but not over \$297,350	<del>\$5,944.64</del> <u>\$2,972.31</u> plus <del>5.04%</del> <u>2.52%</u> of amount over \$166,500
Over \$297,350	<del>\$12,539.45</del> <u>\$6,269.73</u> plus <del>5.54%</del> <u>2.77%</u> of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	<del>2.40%</del> <u>1.05%</u>
Over \$22,600 but not over \$54,625	<del>\$474.60</del> <u>\$237.30</u> plus <del>3.92%</del> <u>1.96%</u> of amount over \$22,600
Over \$54,625 but not over \$83,250	<del>\$1,729.98</del> <u>\$864.99</u> plus <del>4.34%</del> <u>2.17%</u> of amount over \$54,625
Over \$83,250 but not over \$148,675	<del>\$2,972.31</del> <u>\$1,486.16</u> plus <del>5.04%</del> <u>2.52%</u> of amount over \$83,250
Over \$148,675	<del>\$6,269.73</del> <u>\$3,134.87</u> plus <del>5.54%</del> <u>2.77%</u> of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	<del>2.40%</del> <u>1.05%</u>
Over \$36,250 but not over \$93,650	<del>\$764.25</del> <u>\$380.63</u> plus <del>3.92%</del> <u>1.96%</u> of amount over \$36,250
Over \$93,650 but not over \$151,650	<del>\$3,011.33</del> <u>\$1,505.67</u> plus <del>4.34%</del> <u>2.17%</u> of amount over \$93,650

Over \$151,650 but not over \$297,350	<del>\$5,528.53</del> <u>\$2,764.27</u> plus <del>5.04%</del> <u>2.77%</u> of amount over \$151,650
Over \$297,350	<del>\$12,874.81</del> <u>\$6,435.91</u> plus <del>5.54%</del> <u>2.77%</u> of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	<del>2.40%</del> <u>1.05%</u>
Over \$1,800 but not over \$4,250	<del>\$37.80</del> <u>\$18.90</u> plus <del>3.92%</del> <u>1.96%</u> of amount over \$1,800
Over \$4,250 but not over \$6,500	<del>\$133.84</del> <u>\$66.92</u> plus <del>4.34%</del> <u>2.17%</u> of amount over \$4,250
Over \$6,500 but not over \$8,900	<del>\$234.49</del> <u>\$115.75</u> plus <del>5.54%</del> <u>2.52%</u> of amount over \$6,500
Over \$8,900	<del>\$352.45</del> <u>\$176.23</u> plus <del>5.54%</del> <u>2.77%</u> of amount over \$8,900

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States Treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same used for adjusting the income brackets for federal income tax purposes.

**SECTION 3. APPLICATION.** The income brackets in subsection 1 of section 57-38-30.3 as provided in section 2 of this Act are the statutory bracket amounts as enacted for taxable year 2001 and do not reflect cost-of-living adjustments that have been made since that time under subdivision g of subsection 1 of section 57-38-30.3. For purposes of this Act, the tax commissioner shall determine income brackets for each taxable year by applying the appropriate cost-of-living adjustment determined under subdivision g of subsection 1 of section 57-38-30.3 for each taxable year after taxable year 2001.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31", 2008.

Disapproved November 4, 2008

91,412 to 210,598

NOTE: This was measure No. 2 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS DISAPPROVED

## CHAPTER 639

### HOUSE CONCURRENT RESOLUTION NO. 3016

(Representatives DeKrey, Berg, Boucher)  
(Senators Nething, O'Connell, Stenehjem)

### LEGISLATIVE MEMBER APPOINTMENT TO A STATE OFFICE

A concurrent resolution for the amendment of section 6 of article IV of the Constitution of North Dakota, relating to the appointment of a member of the legislative assembly to a full-time appointive state office.

#### STATEMENT OF INTENT

This measure removes the prohibition on appointing a member of the legislative assembly to an office for which the compensation has been increased by the legislative assembly during that member's term of office.

#### **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 6 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.** While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office ~~which that~~ has been created; ~~or to any office for which the compensation has been increased,~~ by the legislative assembly during that term.

Disapproved June 10, 2008

35,888 to 48,644

NOTE: This was measure No. 1 on the 2008 primary election ballot.

**CHAPTER 640****HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Weiler, Boehning, Kasper, Skarphol, Thoreson)  
(Senator Stenehjem)

**PERMANENT OIL TAX TRUST FUND**

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a permanent oil tax trust fund; and to provide an effective date.

**STATEMENT OF INTENT**

This measure establishes a permanent oil tax trust fund and imposes limitations on use of moneys in the fund.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article X of the Constitution of North Dakota is created and enacted as follows:

All revenue deposited in the general fund during a biennium derived from taxes imposed on oil and gas at the time of production or extraction which exceeds one hundred million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. Beginning in 2011, at the beginning of each biennium immediately following a biennium in which revenue from taxes imposed on oil and gas was deposited in the permanent oil tax trust fund, the state treasurer shall adjust the dollar threshold amount as determined under this section for transfers to the permanent oil tax trust fund by applying to that amount the rate of change since the beginning of the previous biennium in the consumer price index for all urban consumers, all items, United States city average, or any successor index, as calculated by the United States department of labor, bureau of labor statistics. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a vote of three-fourths of the members elected to each house of the legislative assembly and not more than twenty percent of the principal may be expended during any biennium.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2009.

Disapproved November 4, 2008

108,748 to 193,111

NOTE: This was measure No. 1 on the 2008 general election ballot.

# CONSTITUTIONAL AMENDMENT PROPOSED

## CHAPTER 641

### HOUSE CONCURRENT RESOLUTION NO. 3054

(Representatives Weiler, Boucher, Carlson)  
(Senators Stenehjem, O'Connell, Triplett)

### NORTH DAKOTA LEGACY FUND

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a North Dakota legacy fund; and to provide an effective date.

#### STATEMENT OF INTENT

This measure establishes a North Dakota legacy fund, provides for deposit of certain oil and gas tax revenues in the fund, and imposes limitations on use of moneys in the fund.

#### **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article X of the Constitution of North Dakota is created and enacted as follows:

1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.
3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in effect but the legislative assembly may adjust statutory allocations for those purposes.

The state investment board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective for oil and gas produced after June 30, 2011.

Filed May 5, 2009

NOTE: This will be measure No. 1 on the 2010 general election ballot.

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 642

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)  
(Agriculture Committee)

A concurrent resolution directing the Legislative Council to continue its study of North Dakota Century Code provisions that relate to agriculture.

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are inconsistent or unclear in their intent and direction; and

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are not reflective of current practices or needs; and

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are illogically arranged or placed; and

**WHEREAS**, the Legislative Council's Agriculture Committee conducted a study during the 2007-08 interim which resulted in recommendations for the revision of numerous North Dakota Century Code chapters that relate to agriculture;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council continue its study of North Dakota Century Code provisions that relate to agriculture for the purpose of recommending changes to laws that are found to be irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 643****HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)  
(Tribal and State Relations Committee)

A concurrent resolution directing the Legislative Council to study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

**WHEREAS**, the rate of population growth on the state's Indian reservations is one of the highest growth rates in the state; and

**WHEREAS**, high rates of poverty and unemployment on the state's Indian reservations require strong, sustainable tribal social service programs; and

**WHEREAS**, tribal social service offices should be involved in the Department of Human Services' budgeting process in consultation with the involvement of county social service offices; and

**WHEREAS**, involvement of tribal social service offices will help the state to identify social service needs on the state's reservations;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members; and

**BE IT FURTHER RESOLVED**, that the Legislative Council assign this study to an interim Human Services Committee or other similar interim committee for study; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 644****HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)  
(Tribal and State Relations Committee)

A concurrent resolution directing the Legislative Council to study Indian education issues.

**WHEREAS**, the rate of population growth on the state's Indian reservations is one of the highest growth rates in the state; and

**WHEREAS**, a larger percentage of Indian youth remain in the state upon graduation than do other youth; and

**WHEREAS**, a good quality education is essential for Indian youth to fully develop their talents and contribute to the general welfare of the state of North Dakota; and

**WHEREAS**, many schools in Indian country are challenged by school finance issues;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study Indian education issues; and

**BE IT FURTHER RESOLVED**, that the Legislative Council assign this study to an interim Education Committee or other similar interim committee for study; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 645****HOUSE CONCURRENT RESOLUTION NO. 3005**

(Representatives Klemin, Kretschmar)  
(Senators Nething, Hogue)

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act, including consideration of issues other states have addressed in considering the Act.

**WHEREAS**, in 2006 the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all states the Revised Uniform Limited Liability Company Act, which revises the Uniform Limited Liability Company Act; and

**WHEREAS**, although North Dakota did not enact the Uniform Limited Liability Company Act, all 50 states and the District of Columbia have enacted their own limited liability company laws; and

**WHEREAS**, in 1993 North Dakota enacted North Dakota Century Code Chapter 10-32, the Limited Liability Company Act, which was based on Minnesota's Limited Liability Company Act; and

**WHEREAS**, historically, North Dakota's business entity laws have been drafted with the cooperation and input of interested persons, including the Secretary of State, and have taken into account the business entity laws of Minnesota; and

**WHEREAS**, the North Dakota Commission on Uniform State Laws supports introduction of the Revised Uniform Limited Liability Company Act; and

**WHEREAS**, although no other state has yet enacted the Revised Uniform Limited Liability Company Act, during the 2009 legislative session several states, including Minnesota, likely will introduce legislation to adopt the Revised Uniform Limited Liability Company Act or to amend the states' existing limited liability laws;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act, including consideration of issues other states have addressed in considering the Act; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 646****HOUSE CONCURRENT RESOLUTION NO. 3006**

(Representatives Klemin, Kretschmar)  
(Senators Nething, Hogue)

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting the Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would impact existing state laws, and what issues other states have addressed in enacting the Act.

**WHEREAS**, in 2005 the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all states the Uniform Debt-Management Services Act; and

**WHEREAS**, the Act provides guidance and regulation to the debt counseling industry, applying to both consumer debt counseling services and debt-management services; and

**WHEREAS**, as a result of the federal bankruptcy reform enacted in 2005, the Act is an essential part of debtor-creditor law; and

**WHEREAS**, Colorado, Delaware, Rhode Island, and Utah have adopted the Act and at least six other states have introduced legislation to adopt the Act; and

**WHEREAS**, the North Dakota Commission on Uniform State Laws supports introduction of the Act; and

**WHEREAS**, the Act requires an enacting state make several substantive selections, including which state agency should administer the Act, whether the Act will regulate for-profit and not-for-profit service providers, and whether a not-for-profit service provider will be exempt from state taxes; and

**WHEREAS**, existing North Dakota law regulates multiple aspects of the debt-counseling industry;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of adopting the Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would impact existing state laws, and what issues other states have addressed in enacting the Act; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 647****HOUSE CONCURRENT RESOLUTION NO. 3007**

(Representatives Porter, Carlson, Damschen, Hanson)  
(Senators Stenehjem, Hogue)

A concurrent resolution urging Congress to amend federal law or policy to implement the North Dakota Game and Fish Department alternative that would allow North Dakota resident sharpshooters to take elk within Theodore Roosevelt National Park to assist the National Park Service in reducing and managing the park's elk population.

**WHEREAS**, Theodore Roosevelt National Park has released a Draft Elk Management Plan/Environmental Impact Statement; and

**WHEREAS**, the Draft Elk Management Plan/Environmental Impact Statement analyzes four action alternatives for initial herd reduction, as well as a no action alternative, and one alternative that could be used in combination with others for elk herd maintenance; and

**WHEREAS**, one alternative for initial herd reduction focuses on sharpshooting elk, using government employees, contractors, or skilled volunteers; and

**WHEREAS**, North Dakota is opposed to the action alternatives identified in the Draft Elk Management Plan/Environmental Impact Statement released by Theodore Roosevelt National Park; and

**WHEREAS**, hunting within the park boundaries is not currently allowed; and

**WHEREAS**, the elk population of Theodore Roosevelt National Park must be reduced to manageable levels to sustain a healthy population of elk in the park; and

**WHEREAS**, the North Dakota Game and Fish Department has developed and recommended an alternative that would reduce the elk population in Theodore Roosevelt National Park using certified volunteer sharpshooters; and

**WHEREAS**, North Dakota sportsmen have the hunting tradition, expertise, and ethics to assist the National Park Service in this effort; and

**WHEREAS**, North Dakota sharpshooters should be chosen by a lottery system and be entitled to keep any animal the sharpshooter takes;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to amend federal law or policy to implement the North Dakota Game and Fish Department alternative that would allow North Dakota resident sharpshooters to take elk within Theodore Roosevelt National Park to assist the National Park Service in reducing and managing the park's elk population; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution by registered mail, return receipt requested, to the Secretary of the Interior, the director of the National Park Service, the superintendent of Theodore Roosevelt National Park, and each member of the North Dakota Congressional Delegation.

Filed February 19, 2009

**CHAPTER 648****HOUSE CONCURRENT RESOLUTION NO. 3008**

(Representatives Keiser, Wald)  
(Senator Klein)

A concurrent resolution directing the Legislative Council to study workers' compensation laws in this state and other states with respect to prior injuries, preexisting conditions, and degenerative conditions.

**WHEREAS**, under North Dakota Century Code Section 65-02-30, Workforce Safety and Insurance is required to undergo a biennial independent performance evaluation to determine, among other things, whether the agency is providing quality service in an efficient and cost-effective manner; and

**WHEREAS**, an element of the 2008 performance evaluation focused on claims for benefits by injured workers who have degenerative conditions; and

**WHEREAS**, the 2008 performance evaluation included conclusions indicating that none of the claims reviewed which involved preexisting or degenerative conditions were inappropriately denied, but that North Dakota law is more conservative than most other jurisdictions as it relates to prior injuries, preexisting or degenerative conditions, triggers, and aggravations; and

**WHEREAS**, the performance evaluation also recommended the creation of a study group of all the stakeholder groups to review how other jurisdictions' statutes handle those issues;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study workers' compensation laws in this state and other states with respect to prior injuries, preexisting conditions, and degenerative conditions; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 649****HOUSE CONCURRENT RESOLUTION NO. 3011**

(Representative Porter)  
(Senator G. Lee)

A concurrent resolution endorsing the concept of regional capability response to manmade and natural disasters in North Dakota.

**WHEREAS**, North Dakota is prone to natural disasters, is vulnerable to manmade disasters, and is susceptible to a terrorist attack; and

**WHEREAS**, North Dakota is a rural state and depends upon volunteer and limited numbers of response discipline personnel for initial disaster response; and

**WHEREAS**, the Department of Homeland Security through the North Dakota Department of Emergency Services has provided substantial funds to response disciplines throughout the state; and

**WHEREAS**, the resources of firefighters, hospitals, emergency medical responders, law enforcement, and public works personnel for equipment, training, and exercises for first response are limited; and

**WHEREAS**, strategic placement of response equipment and increased cooperation of response disciplines in North Dakota are necessary; and

**WHEREAS**, the Department of Homeland Security has embarked on a comprehensive program to consolidate response through the establishment of regional response areas strategically placed within North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly endorses the concept of regional capability response to manmade and natural disasters in North Dakota; and

**BE IT FURTHER RESOLVED**, that future Homeland Security funding for response distribution be adjusted to accommodate this cooperative effort; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the North Dakota Firefighters Association, Fire Chiefs Association, Peace Officers Association, Sheriffs Association, Emergency Medical Association, Health Care Association, Public Works Association, North Dakota Emergency Management Association, North Dakota League of Cities, North Dakota Association of Counties, United States Department of Homeland Security, and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 650****HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representatives Zaiser, Amerman, Delmore, Griffin, Kaldor)  
(Senator Potter)

A concurrent resolution directing the Legislative Council to study the availability of legal representation to assist injured employees in understanding and pursuing Workforce Safety and Insurance decisions.

**WHEREAS**, during the 2007-08 interim, the interim Industry, Business, and Labor Committee and the Workers' Compensation Review Committee studied workers' compensation issues, including receipt of testimony from injured employees who expressed concern with the lack of availability of lawyers willing to represent injured employees in workers' compensation cases; and

**WHEREAS**, the state's workers' compensation laws can be complex and difficult for a layperson to navigate; and

**WHEREAS**, the importance of making knowledge-based decisions in workers' compensation matters is evidenced by Workforce Safety and Insurance's use of legal representation; and

**WHEREAS**, North Dakota law and Workforce Safety and Insurance administrative rules address the terms under which an injured employee may be reimbursed for attorney's fees and costs;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the availability of legal representation to assist injured employees in understanding and pursuing Workforce Safety and Insurance decisions; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 651****HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives Brandenburg, Belter, Boe)  
(Senators Heckaman, O'Connell, Wanzek)

A concurrent resolution urging Congress not to replace "navigable water" with "waters of the United States" in any Clean Water Act-related legislation considered by Congress.

**WHEREAS**, the Clean Water Act is the foundation of federal and state efforts to protect the nation's water and water resources and one of the primary reasons for the success of the Clean Water Act over the past 35 years is the Act's clear recognition of a partnership between the federal government and state governments to protect these resources; and

**WHEREAS**, this federal-state structure of shared responsibility allows states the essential flexibility they need to protect truly ecologically important and environmentally sensitive areas within their borders while, at the same time, preserving the authority of states and local communities over their own land and water use planning; and

**WHEREAS**, the distinction between federal and state responsibility is set forth in Section 101 of the Clean Water Act which states "[i]t is the policy of Congress to recognize, preserve, and protect the primary responsibilities of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources ... and that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired ..."; and

**WHEREAS**, legislative proposals before Congress that seek to replace the term navigable with a broad definition of waters of the United States would destroy the Clean Water Act's careful calibration of federal and state authority because it would provide federal regulation over virtually every water body in the nation; and

**WHEREAS**, broadening the Clean Water Act with vague and ambiguous terminology will abandon the cooperative federalism policies Congress sought to achieve and will undermine the states' authority to plan the development and use of land and water resources and to allocate water within each state's jurisdiction; and

**WHEREAS**, altering the Act's definitional structure could have dire and unintended consequences by adding further regulatory burdens on states and local communities, usurping state authority to manage vital water resources, including ground water, and imposing substantial costs and delays to replace aging water infrastructure; and

**WHEREAS**, the successes of the last 35 years will not alone yield the solutions in the next 35 years and the intractable water challenges faced today as a nation demand more cooperative federalism, not more federal authority;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States not to replace "navigable water" with "waters of the United States" in any Clean Water Act-related legislation considered by Congress; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Senate and House Majority and Minority Leaders of the United States House of Representatives and the United States Senate, the chairman of the Committee on Transportation and Infrastructure of the United States House of Representatives, the United States Secretary of Agriculture, the United States Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed April 24, 2009

**CHAPTER 652****HOUSE CONCURRENT RESOLUTION NO. 3015**

(Representatives Wald, Grande, Heller)  
(Senators Erbele, Freborg, Wardner)

A concurrent resolution urging Congress to reject the bill known as the Freedom of Choice Act, which would invalidate virtually every abortion-related regulation enacted by the people of North Dakota through their elected officials.

**WHEREAS**, a bill, cited by its sponsors as the Freedom of Choice Act, now being considered by the Congress of the United States, would invalidate most North Dakota abortion-related regulations, including virtually all of the North Dakota Abortion Control Act, most of which is now recognized as constitutional and within the province of state jurisdiction in light of decisions by the United States Supreme Court; and

**WHEREAS**, the Freedom of Choice Act would invalidate the North Dakota informed consent law in its entirety including provisions that give a mother seeking an abortion the right to know the probable gestational age of her unborn child, the name of the physician who would perform the abortion, the particular medical risks associated with the abortion procedure to be used as well as the medical risks associated with carrying the child to term and which give her the right to obtain information about the medical benefits that may be available for her and her child before, during, and after the birth of the child, and objective, scientifically accurate medical facts about the development of the unborn child; and

**WHEREAS**, the Freedom of Choice Act would invalidate North Dakota's requirement that a minor seeking an abortion first obtain consent of both parents or authorization of a court before an abortion because the Freedom of Choice Act, on its face, allows a state to require only "parental involvement" such as parental notification, not consent, and would not even allow the state to require mere notification unless the state law also provides each minor the option of consulting an "other responsible adult," thereby circumventing the involvement of a minor's parents; and

**WHEREAS**, the Freedom of Choice Act only allows a state to protect unwilling individuals, but not hospitals, from having to participate in the performance of abortion when they are conscientiously opposed, and thus it would invalidate North Dakota Century Code Section 23-16-14, which protects the freedom of hospitals, physicians, nurses, and hospital employees to refuse to make their facilities available for the performance of abortions, or to participate in an abortion, exposing North Dakota's hospitals that refuse to perform abortions to lawsuits seeking to force them to do so against their conscience and protecting health care workers from discrimination in the work place; and

**WHEREAS**, North Dakota prohibits the use of tax dollars from being used to pay for abortions on demand, currently taxpayers only pay for abortions that are necessary to prevent the mother's death or where the pregnancy has resulted from rape or incest, the Freedom of Choice Act would require tax funding of abortion on demand even when used as a form of birth control; and

**WHEREAS**, because the Freedom of Choice Act would require a state to prove that any health regulation of abortion is "medically necessary" to protect the health of women undergoing such procedures, those provisions in North Dakota's Abortion Control Act requiring the filing of consent forms, the reporting of complications, and the maintenance of patient records would be held to a higher scrutiny in determining their validity than North Dakota record requirements for other medical procedures; and

**WHEREAS**, the Freedom of Choice Act would invalidate the North Dakota requirement that only licensed physicians perform abortions, the Freedom of Choice Act invites litigation to strike down a physician requirement on the basis that it is not "medically necessary" that physicians, as opposed to other trained personnel, perform abortions; and

**WHEREAS**, the Freedom of Choice Act would make the brutal partial-birth abortion method legal again;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to reject the bill known as the Freedom of Choice Act, which would invalidate virtually every abortion-related regulation enacted by the people of North Dakota through their elected officials and to reject any component of the Freedom of Choice Act contained in other legislation; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 653****HOUSE CONCURRENT RESOLUTION NO. 3016**

(Representatives L. Meier, R. Kelsch, Weiler, Wolf)  
(Senators Dever, Flakoll)

A concurrent resolution urging school districts to offer students a course in financial literacy.

**WHEREAS**, many high school students are very optimistic about their chances for financial success and believe themselves to be financially savvy but tests of their financial knowledge consistently show poor performance; and

**WHEREAS**, many parents believe that financial management is a family matter, best learned at home, but the reality is that many parents are unable or unwilling to teach their own children even basic financial lessons such as how to create and maintain a budget, understand credit, or save for the future; and

**WHEREAS**, many parents are unable or unwilling to address with their children concepts such as the time value of money, compounding interest, risk, diversification, and insurance; basic accounting concepts such as assets, liabilities, and market versus book prices; and the rights and responsibilities of consumers and institutions; and

**WHEREAS**, the market turmoil and credit crisis of 2008 serve to underscore the critical need for improved financial literacy among citizens of all ages; and

**WHEREAS**, requiring school districts to offer students a course in financial literacy would provide an opportunity to ensure that students are better prepared to make sound money management decisions for themselves and that students have a sufficient base of knowledge and understanding about financial matters before they begin making those first independent financial decisions as young adults;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges school districts to offer students a course in financial literacy; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the president of each school board and the superintendent of each school district in this state.

Filed April 7, 2009

**CHAPTER 654****HOUSE CONCURRENT RESOLUTION NO. 3017**

(Representatives Delzer, Carlson, Wrangham)  
(Senators Freborg, Stenehjem)

A concurrent resolution recognizing the importance of participation in Census 2010 and encouraging state agencies, political subdivisions, tribal governments, and all public officials to partner with the United States Census Bureau in achieving an accurate and complete count in Census 2010.

**WHEREAS**, because the Census is the basis for allocation of federal funds relating to social services and community development block grants and is the basis for redistricting of the Legislative Assembly, an accurate and complete count is vital to the entire state; and

**WHEREAS**, the results of the Census are used by federal, state, tribal, and local governments for planning purposes, business and economic development purposes, and funding decisions; and

**WHEREAS**, an accurate and complete count in Census 2010 will assist public officials and business leaders in making decisions related to business development and infrastructure needs; and

**WHEREAS**, census questionnaires take only a few minutes to complete and any identifying information provided through the questionnaire is held confidential for 72 years; and

**WHEREAS**, to achieve a full and complete count that includes segments of the population that have been traditionally undercounted, a partnership among the Census Bureau and the state, political subdivisions, tribal governments, and all public officials is vital in providing current and accurate information to the Census Bureau with respect to address lists, jurisdictional boundaries, and other geographical features;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly recognizes the importance of participation in Census 2010 and encourages state agencies, political subdivisions, tribal governments, and all public officials to participate with the United States Census Bureau in achieving an accurate and complete count in Census 2010.

Filed April 7, 2009

**CHAPTER 655****HOUSE CONCURRENT RESOLUTION NO. 3018**

(Representatives Weiler, Carlson, Boucher, Nathe)  
(Senators Stenehjem, O'Connell)

A concurrent resolution declaring Monday, February 9, 2009, "North Dakota Close-Up Day".

**WHEREAS**, the North Dakota Close-Up program is designed to ignite interest in the democratic process and instill in young people the desire to become active participants in their government; and

**WHEREAS**, the North Dakota Close-Up program concentrates on the functions and structures of state government and defines constitutional responsibilities assigned to each of the three branches of government; and

**WHEREAS**, the focus of the 2009 North Dakota Close-Up program is the legislative branch of government; and

**WHEREAS**, the North Dakota Close-Up program has been in existence over two decades; and

**WHEREAS**, it is anticipated that nearly 100 North Dakota high school students will participate in the 2009 North Dakota Close-Up program;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly declares Monday, February 9, 2009, "North Dakota Close-Up Day"; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the North Dakota Council of Educational Leaders.

Filed February 12, 2009

**CHAPTER 656****HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Sukut, Berg, Koppelman)  
(Senators Cook, Hogue, Lyson)

A concurrent resolution directing the Legislative Council to study Section 18 of Article X of the Constitution of North Dakota.

**WHEREAS**, Section 18 of Article X of the Constitution of North Dakota has existed unchanged for more than eighty years; and

**WHEREAS**, this constitutional provision has profound effects on state and political subdivision interaction with businesses and citizens and it is incumbent upon the Legislative Assembly to determine whether the constitutional provision adequately governs the current status of state and local government needs and limitations with respect to businesses and the citizens of the state; and

**WHEREAS**, legislation has been proposed to authorize direct payment of tax dollars to taxpayers, which action may be in violation of Section 18 of Article X of the Constitution of North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study Section 18 of Article X of the Constitution of North Dakota, including alternatives for direct payments of tax dollars to taxpayers; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 28, 2009

**CHAPTER 657****HOUSE CONCURRENT RESOLUTION NO. 3020**

(Representatives Dahl, Hatlestad, Mock)

A concurrent resolution recognizing the North Dakota Council for the Social Studies as the official voice of and organization for social studies teachers in this state.

**WHEREAS**, social studies educators teach students the content knowledge, intellectual skills, and civic values necessary for fulfilling the duties of citizenship in a participatory democracy; and

**WHEREAS**, within a school program, social studies provides coordinated, systematic study drawing upon such disciplines as anthropology, archaeology, economics, geography, history, law, philosophy, political science, psychology, religion, and sociology, as well as appropriate content from the humanities, mathematics, and natural sciences; and

**WHEREAS**, it is the mission of the North Dakota Council for the Social Studies to provide leadership, service, and support for all social studies educators; and

**WHEREAS**, the North Dakota Council for the Social Studies engages and supports educators in strengthening and promoting social studies;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly recognizes the North Dakota Council for the Social Studies as the official voice of and organization for social studies teachers in this state; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the North Dakota Council for the Social Studies.

Filed April 7, 2009

**CHAPTER 658****HOUSE CONCURRENT RESOLUTION NO. 3021**

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

A concurrent resolution urging the United States Fish and Wildlife Service not to list the black-tailed prairie dog, *Cynomys ludovicianus*, as a threatened or endangered species under the Endangered Species Act.

**WHEREAS**, in 2007 the Forest Guardians (also known as WildEarth Guardians), Biodiversity Conservation Alliance, Center for Native Ecosystems, and Rocky Mountain Animal Defense filed a petition with the United States Fish and Wildlife Service requesting that the black-tailed prairie dog, *Cynomys ludovicianus*, be listed as a threatened or endangered species under the Endangered Species Act; and

**WHEREAS**, the petition filed with the United States Fish and Wildlife Service requested that the black-tailed prairie dog, *Cynomys ludovicianus*, be listed as endangered throughout its range, which includes Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming; and

**WHEREAS**, the United States Fish and Wildlife Service has initiated a status review of the species to determine if the listing is warranted; and

**WHEREAS**, the North Dakota Game and Fish Department has submitted its prairie dog management plan to the United States Fish and Wildlife Service and restated the department's belief that this state's black-tailed prairie dog, *Cynomys ludovicianus*, population is biologically viable; and

**WHEREAS**, large concentrations of prairie dog populations cause widespread crop destruction, compete with livestock for the same grazing areas, and create hazardous conditions for livestock;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the United States Fish and Wildlife Service not to list the black-tailed prairie dog, *Cynomys ludovicianus*, as a threatened or endangered species under the Endangered Species Act; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the regional director of the United States Fish and Wildlife Service, the director of the United States Fish and Wildlife Service, the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 659****HOUSE CONCURRENT RESOLUTION NO. 3022**

(Representatives Schatz, Heller, Karls, L. Meier)  
(Senators G. Lee, Nodland)

A concurrent resolution urging Congress not to enact any unfunded education mandates.

**WHEREAS**, the federal government has a long history of burdening states with unfunded mandates; and

**WHEREAS**, the federal government has time and again exhibited little understanding of the fiscal realities that its education mandates have on state and local spending priorities; and

**WHEREAS**, this state should have control over how it spends its own tax dollars for education, rather than be forced by the federal government to support programs the state does not want and does not need;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States not to enact any unfunded education mandates; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the United States Department of Education, and to the board of each school district in this state.

Filed April 7, 2009

**CHAPTER 660****HOUSE CONCURRENT RESOLUTION NO. 3023**

(Representatives Griffin, Koppelman)

A concurrent resolution directing the Legislative Council to study the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in North Dakota Century Code Chapter 12.1-23.

**WHEREAS**, the last major revisions to the monetary amounts that trigger the grading of theft offenses occurred in 1973; and

**WHEREAS**, the proper grading of offenses provides for equitable punishment based upon the severity of the offense committed; and

**WHEREAS**, the appropriate grading of offenses may result in more efficient use of state resources in determining levels of punishment, rehabilitation, and the appropriate alternatives to incarceration;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in North Dakota Century Code Chapter 12.1-23; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 661****HOUSE CONCURRENT RESOLUTION NO. 3025**

(Representatives Myxter, Gruchalla, Potter)  
(Senators Bakke, Mathern, Pomeroy)

A concurrent resolution recognizing the Red River Valley Research Corridor and its accomplishments.

**WHEREAS**, the Red River Valley Research Corridor was conceived as a way to promote economic development, create new jobs, and reverse the outmigration of young North Dakotans leaving the state; and

**WHEREAS**, the Red River Valley Research Corridor initiative was officially launched by Senator Byron L. Dorgan at a meeting he organized in 2002 with the presidents of North Dakota's colleges and universities; and

**WHEREAS**, North Dakota State University and the University of North Dakota serve as the anchors of the Red River Valley Research Corridor with schools and organizations from all corners of the state now fully participating in the statewide initiative; and

**WHEREAS**, Senator Dorgan has used his position on the Senate Appropriations Committee to direct more than \$500 million in federal funding between 2002 and 2008 to Red River Valley Research Corridor projects; and

**WHEREAS**, these congressionally directed federal investments in the Red River Valley Research Corridor have helped to create and expand national centers of research and education in North Dakota in fields including hydrogen, unmanned aerial vehicles, nanoscale science and engineering, life sciences, high-performance computing, air toxic metals, rural crime and justice, energy technology, aerospace, and nanoscience technology; and

**WHEREAS**, a 2006 economic impact study documented that the federal funding secured by Senator Dorgan has produced \$759 million in economic activity, created more than 10,000 jobs, and attracted new businesses to the state; and

**WHEREAS**, the Red River Valley Research Corridor investments have helped North Dakota become the fastest growing state in federal research and development per capita in the last five years and move up 14 positions in four years in The Milken Institute's 2008 State Technology and Science Index report;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly commends Senator Dorgan for creating and funding the Red River Valley Research Corridor, honors the North Dakota researchers and research institutions involved in the cutting-edge Red River Valley Research Corridor projects, and recognizes the enormous economic impact the Red River Valley Research Corridor has had on the North Dakota economy; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward an enrolled copy of this resolution to Senator Byron L. Dorgan.

Filed April 20, 2009

**CHAPTER 662****HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representatives Monson, Glassheim, Nelson)  
(Senators Fischer, Miller, Warner)

A concurrent resolution urging the United States Drug Enforcement Administration to allow North Dakota to regulate industrial hemp farming without requiring federal applications, licenses, or fees.

**WHEREAS**, industrial hemp refers to the nondrug oilseed and fiber varieties of cannabis that have less than three-tenths of one percent tetrahydrocannabinol and which are genetically distinct from the drug varieties of cannabis, also known as marijuana; and

**WHEREAS**, the flowering tops of industrial hemp cannot produce any drug effect when smoked or ingested; and

**WHEREAS**, it was never the intent of Congress to interfere with or otherwise prohibit the farming, production, and utilization of industrial hemp when it enacted the original Marijuana Tax Act of 1937; and

**WHEREAS**, industrial hemp is grown commercially in more than 30 countries, without undue restriction or complications; and

**WHEREAS**, American companies are forced to import millions of dollars worth of hemp seed and fiber products annually from Canada, Europe, and China, thereby effectively denying American farmers an opportunity to compete and share in the profits; and

**WHEREAS**, nutritious hemp foods can be found in grocery stores nationwide and strong durable hemp fibers can be found in the interior parts of millions of American cars; and

**WHEREAS**, buildings are being constructed using a hemp and lime mixture; and

**WHEREAS**, retail sales of hemp products in this country are estimated to be \$365 million annually; and

**WHEREAS**, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value, low-input crop, which can provide significant economic benefits to producers and manufacturers; and

**WHEREAS**, North Dakota State University applied for licensure to conduct multiyear research on industrial hemp in 1999 and received the license from the United States Drug Enforcement Administration in 2008; and

**WHEREAS**, North Dakota State University's license to conduct multiyear research on industrial hemp is valid for only one year; and

**WHEREAS**, North Dakota State University is exceedingly concerned about future license renewals being made in a timely manner, especially in light of the fact that the enclosure required for the research has a construction cost of \$100,000; and

**WHEREAS**, North Dakota has enacted statutes that would allow only stalk, fiber, sterilized seed, and seed oil, which are legal to import, sell, and possess under federal law, to leave the farm and enter commerce; and

**WHEREAS**, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the United States Drug Enforcement Administration to allow North Dakota to regulate industrial hemp farming under existing state laws, without requiring federal applications, licenses, or fees; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Attorney General of the United States, the Administrator of the United States Drug Enforcement Administration, the United States Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 663****HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representatives Kretschmar, Brandenburg)  
(Senator Erbele)

A concurrent resolution congratulating the Napoleon FFA team on its national championship.

**WHEREAS**, the National FFA Organization is dedicated to making a positive difference in the lives of students by developing their potential for premier leadership, personal growth, and career success through agricultural education; and

**WHEREAS**, the National FFA Organization was founded in 1928 and has hosted 80 annual conventions; and

**WHEREAS**, since 1991 Napoleon High School has had 68 state champions and championship teams; and

**WHEREAS**, at the 2008 National FFA Organization convention in Indianapolis, Indiana, a team from Napoleon High School won first place in the Agricultural Sales Career Development event; and

**WHEREAS**, this is the first national championship for Napoleon High School and the first for this state; and

**WHEREAS**, the members of the championship team are Cole Laber, Andrew Young, Alison Moser, and Morgan Schwartzenberger and the advisor is Mr. Brian Schneider;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly of North Dakota takes extraordinary pride in extending its heartiest congratulations to the Napoleon High School FFA team on its national championship; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the Napoleon High School FFA team, the team's advisor, the superintendent of the Napoleon School District, and the board of the Napoleon School District.

Filed April 20, 2009

**CHAPTER 664****HOUSE CONCURRENT RESOLUTION NO. 3028**

(Representative Belter)  
(Senator Wanzek)

A concurrent resolution urging Congress to support the responsible use of the beneficial qualities of biotechnology such as pharmaceuticals, anti-immune disease control, biodegradable plastics, and other potential benefits to people and the global environment through high-yield agricultural production.

**WHEREAS**, biotechnology refers to any technique that uses living organisms or parts thereof to make or modify a product or plants, animals, or micro-organisms for specific uses and has been used by humankind for thousands of years to improve plants, animals, and micro-organisms; and

**WHEREAS**, in the last three decades scientific advances in molecular biology have resulted in what is known as recombinant DNA technology or "genetic engineering" with the ability to readily move genetic material between more distantly related organisms; and

**WHEREAS**, pest-resistant and disease-resistant crops developed through biotechnology will preserve and improve the environment by reducing the need for herbicides and pesticides; and

**WHEREAS**, modern biotechnology is being used to increase the productivity of crops and livestock, to improve the quality of life by developing new high-yield crops that require fewer inputs and conserve natural resources, to increase the food supply for a rapidly increasing human population, to produce more nutritious foods with longer shelf lives, and to continue to provide consumers with high-quality, low-cost food products; and

**WHEREAS**, further advances in modern biotechnology may result in improved crops that combat vitamin and mineral deficiencies that afflict hundreds of millions of people worldwide or that can be used to produce life-saving vaccines and biodegradable plastics; and

**WHEREAS**, federal law requires that all foods and food ingredients, whether produced by traditional or modern biotechnology, must be extensively reviewed for safety by the United States Food and Drug Administration and meet the provisions of the federal Food, Drug, and Cosmetic Act before these products may be sold to consumers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to support the responsible use of the beneficial qualities of biotechnology such as pharmaceuticals, anti-immune disease control, biodegradable plastics, and other potential benefits to people and the global environment through high-yield agricultural production; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Senate and House Majority and Minority Leaders of the United States House of Representatives and the United States Senate, the United States Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 665****HOUSE CONCURRENT RESOLUTION NO. 3030**

(Representative Belter)  
(Senator Christmann)

A concurrent resolution urging Congress to use common sense principles for congressional action on climate change legislation.

**WHEREAS**, if federal action is taken on greenhouse gas reduction programs, the programs should be developed and implemented by the United States Congress on a bipartisan basis and not by federal agencies acting unilaterally to implement policy outside of the Congress; and

**WHEREAS**, federal action aimed to reduce emissions of carbon dioxide should not impede economic growth, new job creation, or lower the standard of living for all Americans; and

**WHEREAS**, federal action should incorporate a fully transparent cost-benefit assessment yielding a net positive outcome and achieving wide consensus as part of any carbon dioxide emission reduction program so that consumers can be made aware of the potential economic impacts of policies before their implementation; and

**WHEREAS**, federal action should encourage the rapid research, development, demonstration, and deployment, through public-private partnerships, of a broad spectrum of supply-side and demand-side technologies and practices, including energy efficiency, renewable technologies, fossil energy technologies with and without carbon capture and storage, carbon sequestration, and nuclear energy; and

**WHEREAS**, federal action should allow the utility sector to continue to supply consumers with adequate supplies of clean, affordable, and reliable energy and to recover all costs necessary to achieve any greenhouse gas reduction levels sought by public policies; and

**WHEREAS**, federal action should involve all sectors of the economy, all sources and sinks, and all types of greenhouse gases; and

**WHEREAS**, federal action should recognize that climate variability is a global phenomenon that requires comprehensive, long-term, and worldwide responses; and

**WHEREAS**, federal action should recognize that the timeframe for implementation of any greenhouse gas reduction requirements must be scientifically based and tied to technology availability, reliability, and economic feasibility in order to avoid unacceptable impacts on consumers; and

**WHEREAS**, federal action should allow greater access to onshore and offshore public lands for the development of domestic energy resources such as renewables, oil and gas, oil shale, and coal that can be used in power generation technologies that can keep America a leader in economic development; and

**WHEREAS**, federal action should recognize and protect existing and past investment decisions for generation resources such that the net costs of owning and operating existing resources are not increased as a result of any program and that any carbon emission reduction program must be limited in its impact to future investment decisions and tailored to the actual net future growth in demand for energy after application and full use of existing resources;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to use common sense principles for congressional action on climate change legislation; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President, the North Dakota Congressional Delegation, and the Majority and Minority Leaders of the United States House of Representatives and the United States Senate.

Filed April 20, 2009

**CHAPTER 666****HOUSE CONCURRENT RESOLUTION NO. 3032**

(Representatives Headland, Belter, Berg, Nathe, Thoreson, Weiler)

A concurrent resolution urging Congress, the President, and the North Dakota Congressional Delegation to resist efforts to increase income taxes for individuals, including increases by allowing existing reductions to expire; to permanently eliminate the alternative minimum tax; to reject efforts to increase capital gains taxes; and to consider elimination of capital gains taxes on sales of residential property.

**WHEREAS**, most North Dakotans believe that increasing individual income taxes for any individual is the wrong approach to improving the national economy and North Dakotans have found that the best way to allow the state economy to grow is by avoiding tax increases; and

**WHEREAS**, allowing existing income tax reduction provisions to expire is an income tax increase, regardless of what rhetoric is used to avoid calling it an increase; and

**WHEREAS**, the alternative minimum tax was bad policy when enacted and has been allowed to become worse by inattention of Congress to the point that many unsuspecting middle income Americans are now ensnared by it for reasons no one can justify; and

**WHEREAS**, an increase in capital gains taxes would serve as a disincentive to individual investors at a time when investors already have very little incentive to invest in a struggling economy; and

**WHEREAS**, elimination of capital gains taxes on sales of residential property could bolster the ailing housing market;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States, the President of the United States, and the North Dakota Congressional Delegation to resist efforts to increase income taxes for any individuals, including increases by allowing existing reductions to expire; to permanently eliminate the alternative minimum tax; to reject efforts to increase capital gains taxes; and to consider elimination of capital gains taxes on sales of residential property; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President, the North Dakota Congressional Delegation, and the Majority and Minority Leaders of the United States House of Representatives and the United States Senate.

Filed April 20, 2009

**CHAPTER 667****HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives Berg, Carlson, Kaldor, Svedjan)  
(Senators Grindberg, Stenehjelm)

A concurrent resolution directing the Legislative Council to prepare and publish an annual pocket brochure of pertinent state economic indicators and state government statistics.

**WHEREAS**, North Dakota residents inquire about the status of the state's economy and the use of state tax dollars; and

**WHEREAS**, information on economic changes and trends is valuable for legislators to review to assist in the development of state taxation and spending policies; and

**WHEREAS**, information on the outcomes and results of state government programs is useful to measure the benefit of state government to the citizens; and

**WHEREAS**, other state legislatures publish documents providing pertinent state statistics and fiscal facts; and

**WHEREAS**, it is important for legislators to have quick access to key state economic indicators and pertinent state government fiscal information;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council prepare and publish a pocket brochure of pertinent state economic and state government statistics and trends relating to economic data, including population, age distribution, percent of population in poverty, children in poverty, median home prices, gross state product, per capita personal income, state exports, jobs, employment/unemployment; state government budget data, including state tax burden and numbers of state employees; education data, including elementary, secondary, and postsecondary student performance; human services data, including program results; and public safety data, including numbers of inmates and recidivism rates; and

**BE IT FURTHER RESOLVED**, that the Legislative Council arrange for this information to be updated and disseminated to each legislator annually.

Filed April 7, 2009

**CHAPTER 668****HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Belter, Brandenburg)  
(Senator Klein)

A concurrent resolution urging the President and Congress to develop energy resources on the nation's Outer Continental Shelf, promote domestic energy production, and to not impose additional taxes on America's energy producers.

**WHEREAS**, the congressional moratorium on the Outer Continental Shelf ended on September 30, 2008; and

**WHEREAS**, Americans are suffering from highly volatile energy prices; and

**WHEREAS**, America needs a comprehensive energy policy that recognizes the roles that all forms of energy can play; and

**WHEREAS**, according to the United States Department of Interior, there are an estimated 86 billion barrels of oil and 420 trillion cubic feet of natural gas on the Outer Continental Shelves; and

**WHEREAS**, the nation's farming, ranching, and business sectors depend on a reliable and affordable supply of energy to run equipment, fertilize crops, and transport products to the market; and

**WHEREAS**, offshore oil drilling would create new jobs that often pay well above the national average; and

**WHEREAS**, production of oil and natural gas has brought billions of dollars in revenue to state and federal governments; and

**WHEREAS**, new drilling techniques and environmentally sound technologies have made drilling and production methods that practically eliminate spills from offshore platforms; and

**WHEREAS**, America's energy producers and North Dakota's oil and gas industry invest billions of dollars into research and development of new energy technologies to make exploration in the Outer Continental Shelf and the Bakken Shale Formation economical; and

**WHEREAS**, the administration's proposal of billions of dollars in new taxes on America's oil and gas industry will discourage investment in new energy technologies and exploration, resulting in a loss of jobs, and more price volatility in energy markets; and

**WHEREAS**, the imposition of a windfall profits tax, or the elimination of incentives to encourage energy production, on oil and natural gas companies will lead to decreased supply and increased prices; and

**WHEREAS**, safe and responsible development and production of domestic energy resources will provide economic benefits, enhance national security, reduce

dependence on foreign sources of energy, and encourage research and development of new energy technologies;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly strongly urges the President and Congress to explore and develop oil and natural gas resources in the Outer Continental Shelf, promote domestic energy production, and to not impose additional taxes on America's energy producers; and

**BE IT FURTHER RESOLVED,** that the Secretary of State forward copies of this resolution to the President, the North Dakota Congressional Delegation, and the Majority and Minority Leaders of the United States House of Representatives and the United States Senate.

Filed April 20, 2009

**CHAPTER 669****HOUSE CONCURRENT RESOLUTION NO. 3041**

(Representatives Schneider, Dahl)  
(Senators Nelson, Schneider)

A concurrent resolution to recognize the American Foundation for Suicide Prevention and the American Foundation for Suicide Prevention - North Dakota Chapter for their efforts in understanding and preventing suicide through research and education and for providing programs and resources for individuals with mood disorders and those impacted by suicide and to recognize depression as a mental illness and how individuals who suffer from depression may be at an increased risk of suicidal behavior.

**WHEREAS**, the American Foundation for Suicide Prevention is the leading national not-for-profit organization exclusively dedicated to understanding and preventing suicide through research and education and to reaching out to people with mood disorders and those affected by suicide; and

**WHEREAS**, in 2005 there were 32,637 reported suicide deaths in the United States which translates into 11 suicide deaths per 100,000 persons or one suicide death every 16.6 minutes; and

**WHEREAS**, in 2005 North Dakota, which had 92 reported suicide deaths, had the 12th highest suicide rate in the country, a rate of 14.5 suicide deaths per 100,000 persons and an average of 1.8 suicide deaths every week; and

**WHEREAS**, suicide is considered to be the second leading cause of death among college students; the second leading cause of death for people aged 24 to 34; the third leading cause of death for people aged 10 to 24; and the fourth leading cause of death for adults between the ages of 18 and 65; and

**WHEREAS**, at least 90 percent of people who die by suicide have a diagnosable and treatable psychiatric illness, such as major depression, bipolar depression, or some other depressive illness, including schizophrenia; alcohol or drug abuse, particularly when combined with depression; posttraumatic stress disorder, or some other anxiety disorder; bulimia or anorexia nervosa; or personality disorders, such as borderline or antisocial; and

**WHEREAS**, over 60 percent of all people who die by suicide suffer from major depression and if alcoholics who are depressed are included in the calculation, this figure rises to over 75 percent; and

**WHEREAS**, depression is among the most treatable of psychiatric illnesses; and

**WHEREAS**, between 80 percent and 90 percent of people with depression respond positively to treatment and almost all patients gain some relief from their symptoms with treatment; and

**WHEREAS**, to achieve its mission of understanding and preventing suicide, the American Foundation for Suicide Prevention and the American Foundation for Suicide Prevention - North Dakota Chapter encourage and fund scientific research

into why suicide occurs and how best to prevent it; shape and coordinate new treatment initiatives aimed at reducing suicide; provide educational programs for mental health clinicians, educators, physicians, and other professionals; offer programs to help survivors heal; promote policies that further the prevention of suicide; foster public awareness about warning signs and risk factors; and provide programs and resources for people with mood disorders and their families and involve them in the work of the foundation and chapter;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly recognizes the American Foundation for Suicide Prevention and the American Foundation for Suicide Prevention - North Dakota Chapter for their efforts in understanding and preventing suicide through research and education and for providing programs and resources for individuals with mood disorders and those impacted by suicide and recognizes depression as a mental illness and how individuals who suffer from depression may be at an increased risk of suicidal behavior; and

**BE IT FURTHER RESOLVED,** that the Secretary of State forward copies of this resolution to the executive director of the American Foundation for Suicide Prevention and to the president of the American Foundation for Suicide Prevention - North Dakota Chapter.

Filed April 7, 2009

**CHAPTER 670****HOUSE CONCURRENT RESOLUTION NO. 3042**

(Representatives Schneider, Dahl)  
(Senator Nelson)

A concurrent resolution expressing support for the public awareness of multiple sclerosis and urging the Congress of the United States to join in the movement in creating a world free of multiple sclerosis.

**WHEREAS**, multiple sclerosis is a chronic and disabling disease of the central nervous system in which the progression, severity, and specific symptoms cannot be foreseen; and

**WHEREAS**, every hour of every day someone new is diagnosed with multiple sclerosis, a disease that can erode a person's abilities and hopes, halt a career, and unravel the fabric of families; and

**WHEREAS**, last year in North Dakota more than \$700,000 was raised to find a cure for multiple sclerosis and develop effective treatments for the disease, as well as to provide a wide range of client programs to improve the lives of the 1,500 individuals living with multiple sclerosis in our state; and

**WHEREAS**, this investment is paying off in significant advances in treating multiple sclerosis, such as new medications that may reduce or delay future disability for people with multiple sclerosis; and

**WHEREAS**, although research advances have brought us closer to finding the cure, much remains to be done and services must continue to be provided to those who live with the disease; and

**WHEREAS**, there are public and private agencies available to serve the constantly changing needs of North Dakotans with multiple sclerosis and their families by extending essential service to all who need them;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly expresses support for the public awareness of multiple sclerosis and urges the Congress of the United States to join in the movement in creating a world free of multiple sclerosis; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 671****HOUSE CONCURRENT RESOLUTION NO. 3044**

(Representatives Mueller, DeKrey, Kaldor)  
(Senators Horne, Triplett, Wardner)

A concurrent resolution directing the Legislative Council to study the allocation of wind rights.

**WHEREAS**, defining wind rights and establishing a connection between wind rights and the surface estate would provide all stakeholders consistency and stability in the development of wind power; and

**WHEREAS**, noise and visual disturbances created by wind towers are issues that are best addressed at the beginning stages of a wind farm and in a consistent manner; and

**WHEREAS**, consistent spacing between wind turbines and from property boundaries provides for fair allocation of wind resources while respecting property rights; and

**WHEREAS**, other rights as to natural resources, for example, oil and gas, which are connected with real property, are allocated in relation to the surface rights and not on a first-come, first-served basis;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the allocation of wind rights; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 672****HOUSE CONCURRENT RESOLUTION NO. 3045**  
(Representatives Drovdal, Kempenich, Nottestad, Pinkerton)

A concurrent resolution directing the Legislative Council to study severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota.

**WHEREAS**, a quarter section of land may have hundreds of individuals with severed mineral rights in relation to that quarter; and

**WHEREAS**, the surface owner may not own any or all of the severed mineral rights, but is burdened entirely with the development of those rights; and

**WHEREAS**, it is often extremely difficult to determine who owns severed mineral rights in this state, whether the owners are governmental entities, residents, or nonresidents who may or may not actively manage the mineral interests; and

**WHEREAS**, there are procedures for the termination of mineral interests in North Dakota Century Code Chapter 38-18.1 that should be reviewed to determine if the statutory provisions are meeting the needs of the people of this state and if issues and abuses have arisen due to the increased oil and gas activity in this state; and

**WHEREAS**, North Dakota produces a very high grade of crude oil but the sales price of that oil is substantially discounted for several reasons, including the cost of transporting the oil to the point of sale, and an examination of the feasibility and desirability of state assistance or incentives to reduce the discount should be undertaken;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 673****HOUSE CONCURRENT RESOLUTION NO. 3048**

(Representatives Mueller, Hofstad, D. Johnson)  
(Senators Flakoll, Krauter, Wanzek)

A concurrent resolution directing the Legislative Council to study the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors; and ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk.

**WHEREAS**, North Dakota law requires that warehouses and grain buyers be licensed and bonded and places those requirements within the authority of the Public Service Commission; and

**WHEREAS**, bond requirements are based on the physical size of a facility or on the amount of grain that a grain buyer handles; and

**WHEREAS**, even if all bonding requirements are met, there is no guarantee that sufficient assets are available to satisfy all claims in the event of an insolvency; and

**WHEREAS**, defaults by producers or purchasers beyond the local elevator can have adverse consequences for local elevators; and

**WHEREAS**, bond protection does not extend to credit-sale contracts and the Legislative Assembly in 2003 created an indemnity fund to provide some measure of protection; and

**WHEREAS**, the amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of 80 percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or \$280,000; and

**WHEREAS**, today's volatile financial market and volatile commodity prices can dramatically impact risk and risk coverage for sellers and buyers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors; ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 24, 2009

**CHAPTER 674****HOUSE CONCURRENT RESOLUTION NO. 3051**

(Representatives Kretschmar, Brandenburg, D. Johnson)

A concurrent resolution directing the Legislative Council to study imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule.

**WHEREAS**, it is a legislative responsibility to assure that criminal and civil penalties, fines, fees, and forfeitures are imposed according to law and within the purview of an appropriate level of legislative and public scrutiny; and

**WHEREAS**, imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule may not provide adequate safeguards of public consideration and legislative deliberation, which are provided by consideration of legislation by the full Legislative Assembly; and

**WHEREAS**, it is incumbent upon the Legislative Assembly to conduct a thorough review of criminal and civil penalties, fines, fees, and forfeitures to ensure that legislative and public interests are properly addressed in existing administrative rules and procedures for implementation and imposition of administrative rules imposing criminal and civil penalties, fines, fees, and forfeitures;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 675****HOUSE CONCURRENT RESOLUTION NO. 3061**

(Representatives Boucher, Boe, Delmore)

A concurrent resolution directing the Legislative Council to study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery.

**WHEREAS**, elementary and secondary education can be delivered to Indian students attending schools operated within a school district structure, schools operated by the Bureau of Indian Affairs, and schools operated by tribes under contracts or grants; and

**WHEREAS**, regardless of the delivery system, many Indian children have educational challenges that stem from high poverty rates, isolation, and limited English proficiency; and

**WHEREAS**, in certain locations, issues of curriculum, teacher availability, data collection, accountability, transportation, special education, and the adequacy of school facilities are even more critical aspects of educational delivery;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 676****HOUSE CONCURRENT RESOLUTION NO. 3063**

(Representatives Headland, Kasper, Koppelman, Nathe, Thoreson, Weiler)  
(Approved by the Delayed Bills Committee)

A concurrent resolution affirming North Dakota's sovereignty under the 10th Amendment to the Constitution of the United States and to demand the federal government halt its practice of assuming powers and imposing mandates on the states for purposes not enumerated in the Constitution of the United States.

**WHEREAS**, the 10th Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; and

**WHEREAS**, the 10th Amendment defines the total scope of federal power as being that specifically granted by the Constitution of the United States and no more; and

**WHEREAS**, the scope of power defined by the 10th Amendment means that the federal government was created by the states and the powers of the federal government are limited and enumerated; and

**WHEREAS**, in 2009 the states are demonstrably treated as agents of the federal government; and

**WHEREAS**, many federal laws are directly in violation of the 10th Amendment to the Constitution of the United States; and

**WHEREAS**, the 10th Amendment assures that we, the people of the United States of America and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp; and

**WHEREAS**, the United States Supreme Court ruled in New York v. United States, 112 S. Ct. 2408 (1992) that Congress may not simply commandeer the legislative and regulatory processes of the states; and

**WHEREAS**, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly affirms this state's sovereignty under the 10th Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States and demands the federal government halt its practice of assuming powers and imposing mandates upon the states for purposes not enumerated in the Constitution of the United States; and

**BE IT FURTHER RESOLVED**, that this resolution serves as notice and demand to the federal government to cease and desist, effective immediately, mandates that are beyond the scope of constitutionally delegated powers; and

**BE IT FURTHER RESOLVED**, that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding be prohibited or repealed; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, each justice of the Supreme Court of the United States, each judge in the United States Court of Appeals for the Eighth Circuit, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officer of each state legislative body in the United States of America, and to each member of the North Dakota Congressional Delegation.

Filed April 30, 2009

**CHAPTER 677****HOUSE CONCURRENT RESOLUTION NO. 3064**

(Representatives J. Kelsh, Amerman, Hawken, S. Kelsh)

(Senators Flakoll, Mathern)

(Approved by the Delayed Bills Committee)

A concurrent resolution supporting Congress in its efforts to obtain the release of Roxana Saberi.

**WHEREAS**, Roxana Saberi has worked as a reporter for a number of international news organizations; and

**WHEREAS**, Roxana Saberi has been detained in Iran since January under the claim that she was engaged in "illegal" activities because she continued working in Iran after the government revoked her press credentials; and

**WHEREAS**, Roxana Saberi is being held in Evin Prison, which has been referred to by the British Broadcasting Corporation as Iran's most notorious prison; and

**WHEREAS**, Roxana Saberi has been allowed only one brief telephone contact with her family; and

**WHEREAS**, Roxana Saberi grew up in Fargo, North Dakota, graduated from Concordia College, and is known to many residents as a former reporter for KVLV-TV and a former Miss North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly supports Congress in all of its efforts to obtain the release of Roxana Saberi and ensure her safe return to the United States and her return to the family members, friends, colleagues, and thousands of supporters and well-wishers who daily keep her in their thoughts and prayers; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the family of Roxana Saberi and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 678****HOUSE CONCURRENT RESOLUTION NO. 3065**

(Government and Veterans Affairs Committee)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging Congress to appoint an independent counsel to investigate the issue of American prisoners of war and those missing in action.

**WHEREAS**, the issue of prisoners of war and those missing in action has been a national dilemma since the end of World War II; and

**WHEREAS**, there is a strong need for an independent investigation into all unresolved matters relating to any United States personnel unaccounted for from the Gulf War, Vietnam Conflict, Korean Conflict, World War II, and Cold War missions, including personnel missing in action and prisoners of war; and

**WHEREAS**, it is the responsibility and duty of the United States government to bring home Americans missing in action from the Gulf War, Vietnam Conflict, Korean Conflict, World War II, and Cold War missions; and

**WHEREAS**, as of July 2005 the Government Accountability Office listed 88,115 service men and women unaccounted for from these conflicts; and

**WHEREAS**, American prisoners of war and their missing comrades have demonstrated the true spirit of our nation and should never be forgotten; and

**WHEREAS**, the families of these inspiring Americans deserve to know what happened to their loved ones; and

**WHEREAS**, Americans from every generation have answered the call to duty with dedication and valor and these brave Americans deserve the respect and gratitude of our nation and all efforts should be made to resolve the prisoner of war and missing in action issue in their honor;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to appoint an independent counsel to investigate the issue of American prisoners of war and those missing in action; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 679****HOUSE CONCURRENT RESOLUTION NO. 3067**

(Representatives Mueller, Holman, D. Johnson)

(Senators Klein, Miller, Wanzek)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging the restoration, through legal or political means, of the Environmental Protection Agency's final rule exempting pesticides from the Clean Water Act's permitting requirements.

**WHEREAS**, on November 27, 2007, the Environmental Protection Agency issued a final rule providing that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from the Clean Water Act's permitting requirements; and

**WHEREAS**, in *National Cotton Council of America v. United States Environmental Protection Agency*, the United States Court of Appeals for the Sixth Circuit vacated the agency's rule on the basis that pesticide residues and biological pesticides constitute pollutants under federal law and must be regulated under the Clean Water Act in order to minimize the impact to human health and the environment; and

**WHEREAS**, with this decision, farmers, ranchers, utility owners, golf course owners, and state, local, and federal public entities, among others, will be required to obtain national pollutant discharge elimination system permits; and

**WHEREAS**, this decision inevitably will result in complications and delays that will seriously impact the effective and time-sensitive use of pesticides to combat disease and crop-destroying insects, and seriously impact the ability of farmers and ranchers to engage in food production;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly supports the restoration, through legal or political means, of the Environmental Protection Agency's final rule exempting pesticides from the Clean Water Act's permitting requirements, provided that the pesticides are applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture, the Secretary of the Environmental Protection Agency, the Majority and Minority Leaders of the United States House of Representatives and the United States Senate, and to each member of the North Dakota Congressional Delegation.

Filed April 30, 2009

# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 680

### SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)  
(Budget Section)

A concurrent resolution authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress.

**WHEREAS**, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 creating the community services block grant program; and

**WHEREAS**, the Legislative Assembly is required to conduct public hearings; and

**WHEREAS**, the Appropriations Committees have met the public hearing requirement for community services block grant moneys expected for the next biennium by the Department of Commerce; and

**WHEREAS**, the Sixty-first Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after the recess or adjournment of the Legislative Assembly; and

**WHEREAS**, the Legislative Assembly will not meet in regular session during 2010 and thus its public hearing responsibility for grants not approved by the Sixty-first Legislative Assembly must be delegated to a legislative entity;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Department of Commerce appropriation bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2011; and

**BE IT FURTHER RESOLVED**, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of additional block grants or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

**BE IT FURTHER RESOLVED**, that the authority granted by this resolution is in effect during the period from the recess or adjournment of the Sixty-first Legislative Assembly through September 30, 2011, and the Budget Section may provide public notice and hold the hearings authorized by this resolution using the methods and procedures it deems appropriate.

Filed April 20, 2009

**CHAPTER 681****SENATE CONCURRENT RESOLUTION NO. 4002**

(Legislative Council)  
(Workforce Committee)

A concurrent resolution directing the Legislative Council to study the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the Sixty-first Legislative Assembly.

**WHEREAS**, during the 2007-08 interim the Legislative Council's Workforce Committee studied the state's system for addressing workforce needs through a workforce system initiative that included receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, active participation in five focus groups across the state, and active participation in the Workforce Congress; and

**WHEREAS**, the Workforce Committee contracted with Thomas P. Miller and Associates to facilitate the focus groups and the Workforce Congress and to provide a report summarizing information gathered, prioritizing workforce-related action items, and identifying workforce system policy and implementation options and recommendations; and

**WHEREAS**, the interim Workforce, Education, and Higher Education Committees held a joint meeting to address workforce-related committee activities in order to coordinate workforce study activities; and

**WHEREAS**, although the Workforce, Education, and Higher Education Committees approved and recommended legislative packages addressing workforce-related issues, there are significant workforce action items in the Thomas P. Miller and Associates report which have not been fully addressed and which warrant additional legislative study and consideration;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the Sixty-first Legislative Assembly; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 682****SENATE CONCURRENT RESOLUTION NO. 4003**

(Legislative Council)  
(Workforce Committee)

A concurrent resolution expressing support for the development of a balanced national immigration policy and urging Congress to work to develop an immigration policy that protects and preserves the safety and interests of the United States and its citizens while also recognizing the needs of businesses to have a stable and legal supply of workers.

**WHEREAS**, North Dakota's economy is growing and as a result there are approximately 15,000 unfilled jobs in the state; and

**WHEREAS**, three population trends affecting the state--rural depopulation, outmigration of young adults and young families, and an increasing proportion of the elderly--are contributing toward a difficulty in businesses meeting workforce needs; and

**WHEREAS**, the United States generally, and North Dakota specifically, will be facing demographic challenges related to decreasing numbers of high school graduates; and

**WHEREAS**, continued economic growth in this state and this country is dependent on businesses being able to access and rely on a stable and legal workforce; and

**WHEREAS**, current immigration law does not address United States labor shortages or marketplace dynamics; and

**WHEREAS**, in addition to working to eliminate current visa backlogs, there are steps that could be taken at the federal level to help address workforce-related immigration issues, including:

- Increasing annual immigrant visa caps;
- Streamlining the processing of visas; and
- Expediting work authorization for foreign nationals who are awarded university-level degrees from United States institutions in order to ensure the benefits of the educational investment the country has made in these individuals remain in our country; and

**WHEREAS**, workforce-related immigration challenges are being experienced nationwide;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly expresses support for the development of a balanced national immigration policy and urges the Congress of the United States to work to develop an immigration policy that protects and

preserves the safety and interests of the United States and its citizens while also recognizing the needs of businesses to have a stable and legal supply of workers; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the United States Department of Homeland Security, and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 683****SENATE CONCURRENT RESOLUTION NO. 4004**

(Senator Dever)  
(Representative R. Kelsch)

A concurrent resolution designating Senate and House employment positions and fixing compensation.

**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That for the Sixty-first Legislative Assembly, the following positions are designated as employee positions of the Senate and House and are to be paid the daily wages indicated:

SENATE	
Secretary of the Senate	\$146
Assistant secretary of the Senate	129
Journal reporter	142
Calendar clerk	129
Bill clerk	123
Sergeant-at-arms	114
Administrative assistant to majority leader	134
Staff assistant to majority leader	134
Administrative assistant to minority leader	134
Staff assistant to minority leader	134
Chief committee clerk	134
Appropriations Committee clerk	134
Assistant Appropriations Committee clerk	129
Committee clerk for three-day committee	129
Committee clerk for two-day committee	120
Assistant committee clerk	120
Deputy sergeant-at-arms	94
Chief page and bill book clerk	104
Legislative assistant	89

HOUSE	
Chief clerk	\$146
Assistant chief clerk	129
Journal reporter	142
Calendar clerk	129
Bill clerk	123
Sergeant-at-arms	114
Administrative assistant to majority leader	134
Staff assistant to majority leader	134
Administrative assistant to minority leader	134
Staff assistant to minority leader	134
Administrative assistant to Speaker	134
Chief committee clerk	134
Appropriations Committee clerk	134
Assistant Appropriations Committee clerk	129
Committee clerk for three-day committee	129

Committee clerk for two-day committee	120
Assistant committee clerk	120
Payroll clerk	109
Deputy sergeant-at-arms	94
Chief page and bill book clerk	104
Legislative assistant	89

**BE IT FURTHER RESOLVED**, that each employee of the Sixty-first Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the Senate or the House, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

**BE IT FURTHER RESOLVED**, that each majority leader and each minority leader is entitled to one administrative assistant and two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

**BE IT FURTHER RESOLVED**, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

**BE IT FURTHER RESOLVED**, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay, and a part-time employee may hold more than one part-time position so long as the positions held do not exceed a full-time equivalent position; and

**BE IT FURTHER RESOLVED**, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 19, 2009

**CHAPTER 684****SENATE CONCURRENT RESOLUTION NO. 4006**

(Senators Heckaman, Wardner)  
(Representatives Hunskor, L. Meier, Wolf)

A concurrent resolution directing the Legislative Council to study professional development opportunities for teachers and the most effective and efficient methods of providing professional development opportunities.

**WHEREAS**, standards and accountability in education require high-quality teachers; and

**WHEREAS**, the rapid development and incorporation of new technologies require high-quality teachers; and

**WHEREAS**, the increasing heterogeneity of American students and the challenges that many students bring into the classroom require high-quality teachers; and

**WHEREAS**, to meet the goals of kindergarten through grade 12 education, today's teachers must be superior academicians and pedagogues and also be flexible, adaptable, efficient, and creative; and

**WHEREAS**, today's teachers need professional development opportunities in which teachers can be exposed to new perspectives, learn new skills, and develop new ways of collegial collaboration; and

**WHEREAS**, the need to stay abreast of the changes in teaching takes time, resources, and commitment;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study professional development opportunities for teachers and the most effective and efficient methods of providing professional development opportunities; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 685****SENATE CONCURRENT RESOLUTION NO. 4008**

(Senators Dever, Flakoll, Marcellais, Oehlke)  
(Representatives L. Meier, Nathe)

A concurrent resolution urging Congress and the President to adopt a veterans remembered flag.

**WHEREAS**, there are flags for all branches of the armed services and flags for prisoners of war and individuals declared missing in action, but there is not a flag to honor the millions of former military personnel who have served our nation; and

**WHEREAS**, it is estimated that 20,400,000 veterans have served in our nation's military; and

**WHEREAS**, a veterans remembered flag would memorialize and honor all past, present, and future veterans and would be a symbol of recognition for a group and an ideal; and

**WHEREAS**, displaying and flying this flag would honor the millions of individuals who have served our country in times of war, peace, and national crisis; and

**WHEREAS**, the symbolism of this unique flag's design would be all inclusive and would pay respect to the history of our nation, to all branches of the military, and honor those who have served or died in the service of our nation;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress and President of the United States to adopt a veterans remembered flag; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 686****SENATE CONCURRENT RESOLUTION NO. 4009**

(Senators Krebsbach, Nelson, Wardner)  
(Representatives DeKrey, Klein, Kretschmar)

A concurrent resolution directing the Legislative Council to study the adequacy of governmental services, including judicial services, to respond to issues related to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship services.

**WHEREAS**, during the 2003-04 interim, a study of guardianship services by the interim Criminal Justice Committee, with the assistance of the North Dakota Guardianship Task Force, identified important deficiencies in the funding and effective delivery of guardianship services; and

**WHEREAS**, legislation recommended by the interim Criminal Justice Committee to address the deficiencies was not enacted and methods for the effective delivery of guardianship services generally, and public guardianship services in particular, remain uncertain, inconsistent, and lacking in sufficient funding; and

**WHEREAS**, state law governing public administrators, a critically important form of public guardianship, is vague and incomplete with respect to services to be provided, levels of supervision, general accountability, the responsibility to adequately compensate those who are appointed to serve as public administrators, and the role of the courts in responding to unique issues associated with an aging population; and

**WHEREAS**, the Administrative Committee on Veterans' Affairs sees a need to study issues of public administrator services and methods for the timely and effective delivery of guardianship services as it relates to the aging veteran population of this state; and

**WHEREAS**, other states have considered or implemented different models for the provision of public guardianship services to ensure adequate services, oversight, and the availability of qualified individuals to provide guardianship services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the adequacy of governmental services, including judicial services, to respond to issues related to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

**CHAPTER 687****SENATE CONCURRENT RESOLUTION NO. 4010**

(Senators Mathern, Lyson)  
(Representatives Boe, Kroeber, Nelson)

A concurrent resolution directing the Legislative Council to study mass, public, and special needs transportation, including the creation of local passenger rail transportation and bus transportation within this state.

**WHEREAS**, the cost of transportation by automobile is unpredictable due to the volatility in the price of petroleum products; and

**WHEREAS**, passenger rail and bus provide a fuel-efficient transportation system, helping to reduce America's dependence on foreign oil; and

**WHEREAS**, shifting transportation to mass and public transportation will lessen the burden of transportation on the overstressed transportation programs in this state; and

**WHEREAS**, there are individuals with disabilities and issues due to aging which raise barriers to transportation and who have special transportation needs that may be met with a voucher program; and

**WHEREAS**, this state is a member of the Midwest Interstate Passenger Rail Compact, the purpose of which is to promote passenger rail service in the Midwest, and an effort to combine a seamless local rail and bus transportation system with a regional system would provide an energy-efficient and cost-effective means of travel throughout the region and, combined with the Amtrak system, throughout the nation;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study mass, public, and special needs transportation, including the creation of local passenger rail transportation and bus transportation within this state; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 688****SENATE CONCURRENT RESOLUTION NO. 4011**

(Senators J. Lee, Bakke, Bowman)  
(Representatives Grande, Nelson, Potter)

A concurrent resolution declaring Friday, February 6, 2009, "National Wear Red Day" in North Dakota and encouraging all citizens to wear red to raise awareness of cardiovascular disease.

**WHEREAS**, diseases of the heart are the nation's leading cause of death and stroke is the third leading cause of death; and

**WHEREAS**, in 2008 the direct and indirect cost of cardiovascular diseases in the United States, including stroke, is estimated to be \$475.3 billion; and

**WHEREAS**, each year, 53 percent of all deaths due to cardiovascular disease and 61 percent of stroke deaths occur in females; and

**WHEREAS**, more women die of heart disease, stroke, and all other cardiovascular diseases than the next five leading causes of death combined, including all cancers; and

**WHEREAS**, Go Red For Women is the American Heart Association's national call to increase awareness about heart disease--the leading cause of death for women--and to inspire women to take charge of their heart health; and

**WHEREAS**, in 2006 the Dakota Medical Foundation and the American Heart Association launched a multiyear \$1.25 million Go Red North Dakota Initiative; and

**WHEREAS**, over 10,000 North Dakota women have joined the Go Red movement; and

**WHEREAS**, while nationally only 21 percent of women consider cardiovascular disease their greatest health risk, the Go Red North Dakota Initiative resulted in 88.7 percent of North Dakota women recognizing heart disease as the leading cause of death; and

**WHEREAS**, all women should learn their own personal risk for heart disease, using tools such as the American Heart Association's Go Red For Women Heart CheckUp and by talking to their health care providers; and

**WHEREAS**, making the right choices relating to proper nutrition, physical activity, doctor visits, and other lifestyle methods is essential to living a heart healthy life;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly, in recognition of the importance of the ongoing fight against heart disease and stroke, commends the North Dakota communities, worksites, and statewide ambassadors who have joined the Dakota

Medical Foundation and American Heart Association Go Red North Dakota Initiative;  
and

**BE IT FURTHER RESOLVED**, that the Sixty-first Legislative Assembly declares Friday, February 6, 2009, "National Wear Red Day" in North Dakota and urges all citizens to show their support for women and the fight against heart disease by commemorating this day by wearing the color red to increase awareness and to empower women to reduce their risk for cardiovascular disease; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the Dakota Medical Foundation, the American Heart Association, and each member of the North Dakota Congressional Delegation.

Filed February 5, 2009

**CHAPTER 689****SENATE CONCURRENT RESOLUTION NO. 4014**

(Senator Wardner)

A concurrent resolution recognizing October 15 as Pregnancy and Infant Loss Remembrance Day.

**WHEREAS**, each year, approximately one million pregnancies in the United States end in miscarriage, stillbirth, or the death of a newborn baby; and

**WHEREAS**, it is a great tragedy to lose the life of a child; and

**WHEREAS**, even the shortest lives are still valuable, and the grief of those who mourn the loss of these lives should be remembered by a compassionate public; and

**WHEREAS**, Governors of all 50 states have signed proclamations designating October 15 as Pregnancy and Infant Loss Remembrance Day; and

**WHEREAS**, the legislatures of the states of Arkansas, Kansas, Kentucky, Louisiana, Missouri, New York, Rhode Island, and South Dakota have passed concurrent resolutions recognizing October 15 of each year as Pregnancy and Infant Loss Remembrance Day; and

**WHEREAS**, the observance of Pregnancy and Infant Loss Remembrance Day may provide comfort to those who have lost a child through miscarriage, stillbirth, or other complications; and

**WHEREAS**, recognizing Pregnancy and Infant Loss Remembrance Day would enable the public to consider how, as individuals and communities, they can meet the needs of bereaved mothers, fathers, and family members, and work to prevent the causes of these deaths; and

**WHEREAS**, October 15 of each year is an appropriate day to observe Pregnancy and Infant Loss Remembrance Day;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly recognizes October 15 as Pregnancy and Infant Loss Remembrance Day, supports the goals and ideals of National Pregnancy and Infant Loss Remembrance Day, and requests that the Governor issue an annual proclamation calling upon the people of North Dakota to observe that day with appropriate compassion, programs, and activities.

Filed April 20, 2009

**CHAPTER 690****SENATE CONCURRENT RESOLUTION NO. 4015**

(Senator Mathern)

(Representatives Nelson, Zaiser)

A concurrent resolution directing the Industrial Commission to conduct a study of the economic impacts of proposed federal, regional, and state carbon cap and trade systems, including the Minnesota Next Generation Energy Act of 2007.

**WHEREAS**, North Dakota has over an 800-year supply of secure and economically recoverable lignite; and

**WHEREAS**, North Dakota receives over \$100 million of annual tax revenue from the lignite industry; and

**WHEREAS**, North Dakota lignite is used to generate electricity for more than two million people in the Northern Great Plains Region and to produce synthetic natural gas from coal that heats 400,000 homes and businesses in Eastern states; and

**WHEREAS**, agriculture is a major industry in North Dakota and is dependent on carbon-based fuels; and

**WHEREAS**, North Dakota's citizens are dependent on fossil fuel-based electricity generation; and

**WHEREAS**, federal, regional, and state initiated cap and trade systems will have a disproportional negative effect on the North Dakota economy; and

**WHEREAS**, Minnesota attempts to regulate greenhouse gas emissions from North Dakota power plants by including emissions from the generation of electricity imported from outside Minnesota and consumed in Minnesota within the definitions of the Minnesota Next Generation Energy Act of 2007; and

**WHEREAS**, should the state of Minnesota not adopt a plan to implement the greenhouse gas emission reduction requirements of the Minnesota Next Generation Energy Act of 2007 by August 1, 2009, the result will be a prohibition against importing fossil fuel-based electricity from new facilities located in North Dakota and entering new long-term power purchase agreements with fossil fuel-based power plants located in North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Industrial Commission conduct a study of the economic impacts of proposed federal, regional, and state carbon cap and trade systems, including the Minnesota Next Generation Energy Act of 2007; and

**BE IT FURTHER RESOLVED**, that the Industrial Commission report the findings and recommendations of the study to the Legislative Council by September 1, 2010.

Filed April 20, 2009

**CHAPTER 691****SENATE CONCURRENT RESOLUTION NO. 4016**

(Senators Potter, Krauter, Marcellais)  
(Representatives Kilichowski, S. Meyer, Schmidt)

A concurrent resolution urging the Congress of the United States and the President to enact federal legislation promoting travel to the United States by overseas visitors, thereby promoting the economies of communities across North Dakota and the United States.

**WHEREAS**, travel and tourism generates \$1.7 trillion in economic activity in the United States every year; and

**WHEREAS**, travel and tourism is a powerful economic generator for North Dakota, accounting for \$3.8 billion in visitor spending in the state in 2006; and

**WHEREAS**, travel and tourism promote job creation in North Dakota with as many as 30,240 jobs related to travel and tourism economic activity, 8.6 percent of total employment in the state; and

**WHEREAS**, travel to the United States from overseas destinations has yet to rebound to pre-9/11 levels; and

**WHEREAS**, tourism promotes diplomacy as overseas visitors are more likely to have a favorable opinion of the United States after having visited; and

**WHEREAS**, all major industrialized nations except the United States have national tourism policies and spend significant funds on promoting their destinations overseas, and, in turn, see substantial returns on their investments; and

**WHEREAS**, communities across the state work to promote travel and would benefit from a federal promotion; and

**WHEREAS**, the Travel Promotion Act would benefit North Dakota and every state, create jobs, explain national security procedures, and improve our national image around the world;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States and the President to enact federal legislation promoting travel to the United States by overseas visitors, thereby promoting the economies of communities across North Dakota and the United States; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 692****SENATE CONCURRENT RESOLUTION NO. 4018**

(Senators Wanzek, Miller, Taylor)  
(Representatives D. Johnson, Nelson)

A concurrent resolution recognizing the need for viable and sustainable agricultural practices in this state.

**WHEREAS**, in 2000 the world population was 6 billion and by 2025 it is predicted to reach 8 billion—an increase of 33 percent; and

**WHEREAS**, in 1965 there were 1.1 acres of arable land per person and by 2025 there will be under 0.5 acre per person available for food production; and

**WHEREAS**, in order to accommodate the food needs of a growing world population, it will be important that agricultural producers having operations of all sizes and types explore ways to improve their management practices and focus on using inputs and resources in the most effective and efficient ways possible; and

**WHEREAS**, in order for present-day agricultural producers to leave a legacy of rich, fertile, and productive land to future generations, they should be encouraged to consider incorporating, in their production practices, both the latest scientific research findings and emerging technologies;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly recognizes that agricultural producers of all sizes and types should be encouraged to pursue effective and efficient practices, in order to ensure that agriculture remains viable and sustainable for multiple generations yet to come; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 28, 2009

**CHAPTER 693****SENATE CONCURRENT RESOLUTION NO. 4019**

(Senators Wanzek, Taylor)  
(Representatives Brandenburg, Froelich)

A concurrent resolution urging Congress to examine carefully the known and potential impacts of implementing a national animal identification system.

**WHEREAS**, to protect the health of United States livestock and poultry and the economic well-being of those industries, it is imperative that an animal disease be traced to its source quickly and effectively; and

**WHEREAS**, when a disease outbreak occurs, animal health officials need to know which animals are involved in the outbreak, where the infected animals are located, and what other animals might have been exposed to the disease; and

**WHEREAS**, a rapid disease response means fewer affected producers, less economic loss, greater preservation of marketability, and increases in markets at home and abroad; and

**WHEREAS**, the national animal identification system is an information system intended to help producers and animal health officials respond quickly and effectively to animal disease events in the United States; and

**WHEREAS**, concerns still exist regarding the effect that a national animal identification system will have on producers, whether it will impinge upon individual rights and privacy, whether it will increase production costs, and whether it will create a large government bureaucracy;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States and the Secretary of the United States Department of Agriculture to examine carefully the known and potential impacts that implementation of a national animal identification system will have on producers of all sizes and on the livestock industry, and to encourage voluntary participation and undertake further development of the system only after assurances exist that the concerns are either without foundation or significantly outweighed by the system's benefits; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 694****SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators O'Connell, Grindberg, Wardner)  
(Representatives Berg, S. Meyer, Skarphol)

A concurrent resolution urging Congress to preserve the exemption of hydraulic fracturing from the provisions of the Safe Drinking Water Act and to not enact legislation that removes the exemption for hydraulic fracturing.

**WHEREAS**, Congress enacted the Safe Drinking Water Act to ensure the protection of the nation's drinking water sources; and

**WHEREAS**, since enactment of the Safe Drinking Water Act, the Environmental Protection Agency has never interpreted hydraulic fracturing as constituting "underground injection" under the Safe Drinking Water Act; and

**WHEREAS**, in 2004 the Environmental Protection Agency published a final report summarizing a study to evaluate the potential threat to underground sources of drinking water from hydraulic fracturing of coalbed methane production wells and the Environmental Protection Agency concluded that "additional or further study is not warranted at this time..." and that "the injection of hydraulic fracturing fluids into coalbed methane wells poses minimal threat to the underground sources of drinking water"; and

**WHEREAS**, Congress, in the Energy Policy Act of 2005, explicitly exempted hydraulic fracturing from the provisions of the Safe Drinking Water Act; and

**WHEREAS**, the Interstate Oil and Gas Compact Commission conducted a survey of North Dakota and other oil and gas-producing states which found that there were no known cases of ground water contamination associated with hydraulic fracturing; and

**WHEREAS**, hydraulic fracturing is currently, and has been for decades, a common operation used in exploration and production by the oil and gas industry in North Dakota and all the member states of the Interstate Oil and Gas Compact Commission; and

**WHEREAS**, approximately 35,000 wells are hydraulically fractured annually in the United States, and close to one million wells have been hydraulically fractured in the United States since the technique's inception, with no known harm to ground water; and

**WHEREAS**, the regulation of oil and gas exploration and production activities, including hydraulic fracturing, has traditionally been the province of the states; and

**WHEREAS**, the success of the Bakken Formation and development of domestic oil and gas resources across the United States has been revitalized by technological advancements which include the ability to fracture and stimulate challenging geological formations, such as the Bakken Formation in North Dakota, and thus should not be limited in the absence of any evidence that such fracturing has damaged the environment; and

**WHEREAS**, the Safe Drinking Water Act was never intended to grant to the federal government authority to regulate oil and gas drilling and production operations, such as "hydraulic fracturing," under the underground injection control program; and

**WHEREAS**, North Dakota and other member states of the Interstate Oil and Gas Compact Commission have adopted comprehensive laws and regulations to provide for safe operations and to protect the nation's drinking water sources and have trained personnel to effectively regulate oil and gas exploration and production; and

**WHEREAS**, domestic production of natural gas will ensure that the United States continues on the path to energy independence; and

**WHEREAS**, regulation of hydraulic fracturing as underground injection under the Safe Drinking Water Act would impose significant administrative costs on the state, substantially increase the cost of drilling oil and gas wells, and potentially stop the development of our state's valuable natural resources, including the Bakken and other formations with no resulting environmental benefits; and

**WHEREAS**, regulation of hydraulic fracturing as underground injection under the Safe Drinking Water Act would increase energy costs to the consumer;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to preserve the exemption of hydraulic fracturing from the provisions of the Safe Drinking Water Act and urges the Congress of the United States not to enact legislation that removes the exemption for hydraulic fracturing; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States, and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 695****SENATE CONCURRENT RESOLUTION NO. 4021**

(Senators Miller, Wanzek, Klein)  
(Representatives Brandenburg, D. Johnson, S. Meyer)

A concurrent resolution urging Congress to recognize the need for United States Department of Agriculture inspection and regulation of horse processing facilities in the United States.

**WHEREAS**, the loss of governmentally regulated processing facilities in the United States has challenged the ability of public and private sector entities to deal with unwanted horses; and

**WHEREAS**, without economically affordable alternatives, individuals are simply abandoning unwanted horses at sale barns, along country roads, and on public lands; and

**WHEREAS**, the abandonment of horses is done without any regard for the horses' welfare and without regard for damage or injury that can be caused by a freeroaming horse on a road or highway; and

**WHEREAS**, the abandonment of horses on public lands may negatively impact herds of wild horses including the introduction of congenital defects and diseases; and

**WHEREAS**, it is estimated that more than 100,000 horses are unwanted by their owners;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges Congress to recognize the need for United States Department of Agriculture inspection and regulation of horse processing facilities in the United States and to allow the transportation and processing of horses and the marketing and exportation of safe and wholesome horse meat; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of Agriculture, the President of the Senate and Speaker of the House of Representatives of the United States Congress, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 696****SENATE CONCURRENT RESOLUTION NO. 4022**

(Senators Krauter, Seymour)

(Representatives Amerman, Ekstrom, Wolf)

A concurrent resolution urging Congress and the President of the United States to enact federal legislation to repeal perverse federal tax subsidies to United States companies that move manufacturing operations and American jobs offshore.

**WHEREAS**, the United States has lost millions of manufacturing jobs over the past eight years; and

**WHEREAS**, federal tax laws actually grant a United States company that closes down a United States manufacturing plant, fires its American workers, and moves those jobs to countries like China a large tax break; and

**WHEREAS**, the Internal Revenue Code allows these firms to defer paying any United States income taxes on the earnings from those now foreign-manufactured products until those profits are returned, if ever, to this country; and

**WHEREAS**, this wrong-headed deferral tax break rewards United States firms that move their production overseas and then turn around and import those products back to the United States for sale; and

**WHEREAS**, this deferral tax break puts companies on American main streets at a competitive disadvantage and has contributed to the loss of millions of good-paying American manufacturing jobs; and

**WHEREAS**, repealing this jobs export tax subsidy will not hinder the ability of United States firms to compete against foreign competitors in foreign markets; and

**WHEREAS**, nonpartisan tax policy experts have estimated that this tax subsidy will waste \$15.5 billion of tax revenues paid by hard-working taxpayers over the next 10 years;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States and the President to enact federal legislation to repeal perverse federal tax subsidies to United States companies that move manufacturing operations and American jobs offshore; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed April 7, 2009

**CHAPTER 697****SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators Dever, Oehlke, Stenehjem)  
(Representatives Clark, Dosch, L. Meier)  
(Approved by the Delayed Bills Committee)

A concurrent resolution commemorating the 100th anniversary of the Boy Scouts of America.

**WHEREAS**, on February 8, 1910, Chicago businessman William D. Boyce incorporated the Boy Scouts of America after learning of the successful scouting program begun in Great Britain by Sir Robert S. S. Baden-Powell; and

**WHEREAS**, the scouting movement has grown from 2,000 youth members and adult volunteers in 1910 to nearly 4 million nationwide today; and

**WHEREAS**, approximately 112 million members have participated in the scouting program since its inception; and

**WHEREAS**, William D. Boyce had significant ties to North Dakota, serving as a newspaper reporter, owner, and editor in Fargo and Lisbon in the 1880s; and

**WHEREAS**, North Dakota's own adopted son, President Theodore Roosevelt, was an enthusiastic early supporter of the Boy Scouts; and

**WHEREAS**, President Roosevelt was named the Boy Scouts of America's first honorary vice president and its first and only designated "Chief Scout Citizen"; and

**WHEREAS**, the Boy Scouts' slogan is "do a good turn daily"; and

**WHEREAS**, the "good turns" done by scouts throughout North Dakota and America have had a meaningful impact on the well-being of the people of our state and nation; and

**WHEREAS**, scouts including our nation's first scout President John F. Kennedy and our nation's first Eagle Scout President Gerald R. Ford have made an impact on our nation and world; and

**WHEREAS**, although Boy Scouting's methods have adapted over the years, its core mission of character development, citizenship training, and personal fitness has remained the same; and

**WHEREAS**, the Boy Scouts of America is committed to helping millions of youth succeed by providing the support, friendship, and mentoring necessary to live happy and fulfilling lives; and

**WHEREAS**, countless North Dakotans have volunteered and continue to volunteer their time, talent, and financial support to advance the mission of scouting; and

**WHEREAS**, these volunteers selflessly serve young people in their communities through the organizations chartered by the Boy Scouts of America to use the program; and

**WHEREAS**, the Northern Lights Council of the Boy Scouts of America will be holding its 100th anniversary celebration on the North Dakota Capitol grounds June 4-6, 2010;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the state of North Dakota commemorates the 100th anniversary of the Boy Scouts of America; and

**BE IT FURTHER RESOLVED**, that the state of North Dakota congratulates and thanks the Boy Scouts of America and its volunteers for the tremendous and positive impact it has on the young people and future of North Dakota.

Filed April 7, 2009

**CHAPTER 698****SENATE CONCURRENT RESOLUTION NO. 4027**

(Senators Taylor, Flakoll, Olafson)  
(Representatives Belter, Boe, Froelich)

A concurrent resolution directing the Legislative Council to study the leasing of state lands.

**WHEREAS**, state lands in North Dakota are managed by the Board of University and School Lands or the Land Department; and

**WHEREAS**, currently these lands are leased at public auction for a maximum lease term of five years; and

**WHEREAS**, state lands have been sold in the past; and

**WHEREAS**, whether and to what extent a preference is given to the lessee should be reviewed; and

**WHEREAS**, extending the lease term from five years to seven or ten years may be more efficient in that it would reduce the cost of land auctions and encourage lessees to make improvements that they otherwise would not make under a shorter lease term; and

**WHEREAS**, promoting policies that encourage good land stewardship would be beneficial to the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the leasing of state lands; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 20, 2009

**CHAPTER 699****SENATE CONCURRENT RESOLUTION NO. 4028**

(Senator Grindberg)

A concurrent resolution directing the Legislative Council to study the charitable gaming laws to determine whether the laws regarding taxation, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.

**WHEREAS**, since the advent of charitable gaming in the state in 1977, charitable gaming has generated significant revenue for the state and has provided a vital source of revenue to numerous charitable organizations throughout the state; and

**WHEREAS**, due to increased competition and other factors, the charitable gaming industry has experienced a decline of activity over the past several years; and

**WHEREAS**, a comprehensive review of the state's charitable gaming laws has not been conducted since the 1993-94 interim; and

**WHEREAS**, a thorough review of laws governing charitable gaming is necessary to assure that laws regarding taxes, expense limitations, enforcement, conduct, and play of charitable games are adequate to govern charitable gaming under current conditions;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the charitable gaming laws to determine whether the laws regarding taxation, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Filed April 7, 2009

**CHAPTER 700****SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Stenehjem, Andrist, Freborg)  
(Representatives Carlson, Dosch, Thoreson)  
(Approved by the Delayed Bills Committee)

A concurrent resolution urging the North Dakota Congressional Delegation and the Congress of the United States to support worker freedom by opposing the federal Employee Free Choice Act and any of the Act's related components.

**WHEREAS**, the right to a private secret ballot is fundamental to our representative republic and should not be infringed upon; and

**WHEREAS**, state and federal law requires elections for public office or public votes on initiatives and referenda be by private secret ballot; and

**WHEREAS**, passage of the federal Employee Free Choice Act could infringe upon the rights of individuals to have a private ballot election; and

**WHEREAS**, the federal Employee Free Choice Act's mandatory binding arbitration provisions would deny workers the right to participate in the collective bargaining process between employees and the union; and

**WHEREAS**, any effort to eliminate private elections jeopardizes the free speech rights of business and workers' individual rights; and

**WHEREAS**, North Dakota is a right-to-work state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the North Dakota Congressional Delegation and the Congress of the United States to support worker freedom by opposing the federal Employee Free Choice Act and any of the Act's related components; and

**BE IT FURTHER RESOLVED**, that the Sixty-first Legislative Assembly expresses opposition to "card check" legislation such as the federal Employee Free Choice Act, finding such legislation is detrimental to the rights of workers and is an offense against democratic principles; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 28, 2009

**CHAPTER 701****SENATE CONCURRENT RESOLUTION NO. 4034**

(Senator Stenehjem)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging the Secretary of the Treasury to authorize the placement of the image of President Theodore Roosevelt on the obverse of the quarters in the national parks quarter dollar series.

**WHEREAS**, the America's Beautiful National Parks Quarter Dollar Coin Act authorizes five quarters per year for at least the next 11 years, with each quarter design to be emblematic of a national park or other national site in each state, the District of Columbia, and each territory of the United States; and

**WHEREAS**, President Theodore Roosevelt had a passion and crusaded for conservation and national sites, setting aside 42 million acres of national forests and over 50 national wildlife refuges, more than all of his predecessors combined; and

**WHEREAS**, the Citizens Coinage Advisory Committee has unanimously endorsed the placement of the image of President Theodore Roosevelt on the obverse of the national parks quarters; and

**WHEREAS**, a member of the Citizens Coinage Advisory Committee has noted that although the National Park System and all Americans in turn arguably owe President Theodore Roosevelt a greater debt of gratitude for his ecological commitment than to any other President, President Theodore Roosevelt has never appeared on a circulating United States coin;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Secretary of the Treasury to authorize the placement of the image of President Theodore Roosevelt on the obverse of the quarters in the national parks quarter dollar series; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Treasury, the President of the United States, and each member of the North Dakota Congressional Delegation.

Filed April 17, 2009

**CHAPTER 702****SENATE CONCURRENT RESOLUTION NO. 4035**

(Senators Grindberg, Anderson, Fischer)  
(Representatives Carlson, J. Kelsh, Thoreson)  
(Approved by the Delayed Bills Committee)

A concurrent resolution urging Congress to establish the Red River Valley Authority as an agency or authorized board of the federal government for the purpose of the regulation and control of water quality of the Red River and regulation and control of the retention and flow of water, including retention by dams or retention ponds or other areas, and of drainage on the Red River.

**WHEREAS**, the Red River of the North and its contributing tributaries and watershed have experienced repeated problems with massive dangerous and destructive flooding, which has seriously threatened the health, safety, and welfare of citizens along the Red River and caused damage to the property of citizens of federal, state, and local government; and

**WHEREAS**, the repeated flooding and threat of flooding has required an extraordinary level of time, money, and resources of state, local, and federal government in fighting and recovering from the repeated floods which, in terms of financial impact, may exceed \$200,000,000 for the flood event of spring 2009 and which cumulatively over the past 12 years is estimated to have had a financial impact in the hundreds of millions of dollars; and

**WHEREAS**, there exists certain regulatory conflicts between urban and rural areas and between different states affected by the Red River and its contributing tributaries, excluding the Souris Basin, such that water quality and quantity concerns are not being consistently addressed, regulated, or enforced; and

**WHEREAS**, the states of Minnesota, North Dakota, and South Dakota are affected by and therefore have an interest in the control of the volume and flow of water and the retention of water in the Red River as well as the quality of water in the Red River; and

**WHEREAS**, there are differences in the procedures and regulations of Minnesota, North Dakota, and South Dakota pertaining to the governance and procedures establishing rules for the control of water quality, water flow, water retention, and the enforcement of those laws and rules; and

**WHEREAS**, the circumstances described in this resolution constitute a matter of interstate concern which the federal government is uniquely able to address;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the Congress of the United States to establish the Red River Valley Authority as an agency or authorized board of the federal government for the purpose of the regulation and control of water quality of the Red River and regulation and control of the retention and flow of water, including retention by dams or retention ponds or other areas, and of drainage on the Red River; and

**BE IT FURTHER RESOLVED**, that the Congressional Act establishing the Red River Valley Authority provide a process for the President of the United States to appoint members selected by the Governors of the states of Minnesota, North Dakota, and South Dakota with the board consisting of not more than nine members, four from Minnesota, four from North Dakota, and one from South Dakota and with all but two members being residents of the area serviced by the Red River Valley Authority and with a provision that requires the Governors to select the board members representing individual citizens; individuals representing business, industry, labor, electric power distribution, the environment, cities, and service organizations; and the Congressional Delegations of the states of Minnesota, North Dakota, and South Dakota in selecting qualified members to serve on the board; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States; the Governors of Minnesota, North Dakota, and South Dakota; and to each member of the Minnesota, North Dakota, and South Dakota Congressional Delegations.

Filed April 28, 2009

**CHAPTER 703****SENATE CONCURRENT RESOLUTION NO. 4036**

(Senators Klein, Wanzek)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging the United States Department of Agriculture to implement livestock indemnity program regulations that account for the fair market value of newborn calves and their cost of production.

**WHEREAS**, the Food, Conservation, and Energy Act of 2008 included a Supplemental Agriculture Disaster Assistance Program; and

**WHEREAS**, the provisions governing indemnity for livestock deaths in excess of normal mortality because of adverse weather are based on seventy-five percent of a fair market value, as determined by the United States Secretary of Agriculture; and

**WHEREAS**, severely cold temperatures, excessive snowfall, and flood conditions have marked the early months of 2009 and resulted in innumerable livestock losses and abnormally high newborn livestock losses; and

**WHEREAS**, indemnity provisions that base losses on the market value of a newborn calf fail to account for the cost of production of that calf and the impact that such a loss has on the ranchers of this state, their families, and their communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly urges the United States Department of Agriculture to develop and implement, as quickly as possible, regulations governing its livestock indemnity program and ensure that the program's indemnification calculations take into account the fair market value of each newborn calf and its cost of production; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2009

**CHAPTER 704****SENATE CONCURRENT RESOLUTION NO. 4037**

(Senators Nething, Stenehjem, O'Connell)  
(Representatives Carlson, Boucher)  
(Approved by the Delayed Bills Committee)

A concurrent resolution recognizing and appreciating the flood fighting and cleanup efforts in this state during the spring of 2009.

**WHEREAS**, record amounts of snowfall were followed by catastrophic flooding in the spring of 2009 on the Red, Missouri, Souris, Cannonball, James, Pipestem, Sheyenne, Knife, Heart, Des Lacs, and Park Rivers and Big Beaver Creek and other rivers and creeks throughout the state; and

**WHEREAS**, flood fighting efforts involved the North Dakota National Guard, Army, Coast Guard, Air Force, Army Corps of Engineers, county and city leaders and employees, and hundreds of volunteers, including many college and high school students; and

**WHEREAS**, our National Guard and all volunteers were supported in flood fighting efforts through supportive employers and educational institutions; and

**WHEREAS**, flood fighting efforts were organized and supported by fraternal and service organizations, employers, churches and other religious organizations, and the American Red Cross, Salvation Army, and other nonprofit organizations by providing food, shelter, and support for the flood fighting efforts; and

**WHEREAS**, the cleanup process is being completed through organizations and individuals moved to help their neighbors in a time of need, including Operation Blessing, the Billy Graham Rapid Response Team, Samaritan's Purse, the Nechama Jewish Response Team, and many local churches and other groups;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-first Legislative Assembly recognizes and appreciates the flood fighting and cleanup efforts during the spring of 2009; and

**BE IT FURTHER RESOLVED**, that the Sixty-first Legislative Assembly recognizes, and requests the Governor to proclaim, June 14, 2009, as a day of recognition to express appreciation for the great and noble effort to fight and clean up after the floods during the spring of 2009; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the groups and organizations identified in this resolution.

Filed April 29, 2009

# HOUSE MEMORIAL RESOLUTION

## CHAPTER 705

### HOUSE MEMORIAL RESOLUTION NO. 7001 (Memorial Resolutions Committee)

A memorial resolution for deceased members of the House of Representatives of North Dakota.

**WHEREAS**, God has welcomed to their eternal home our former colleagues:

Jack Bernabucci, who served in the 40th and 41st Legislative Assemblies, from District 29, died February 10, 2008;

Sam O. Bloom, who served in the 36th through the 39th Legislative Assemblies, from District 40, died December 23, 2008;

Russell Boutilier, who served in the 38th Legislative Assembly, from District 34, died January 25, 2009;

Harold "Hal" Christensen, who served in the 43rd Legislative Assembly, from District 5, died January 15, 2008;

Eugene R. Dahl, who served in the 40th and 41st Legislative Assemblies, from District 26, died July 23, 2008;

Dean Hildebrand, who served in the 42nd through the 44th Legislative Assemblies, from District 15, died September 10, 2008;

Peter S. Hilleboe, who served in the 39th Legislative Assembly, from District 9, and in the 40th through the 44th Legislative Assemblies, from District 21, died November 18, 2008;

Myron Koppang, who served in the 56th and 57th Legislative Assemblies, from District 25, died March 4, 2008;

Bruce W. Larson, who served in the 45th, 47th, and 48th Legislative Assemblies, from District 12, died September 30, 2007;

Clarence P. Loewen, who served in the 35th through the 37th Legislative Assemblies, from District 48, died January 14, 2008;

Gilman Peterson, who served in the 37th Legislative Assembly, from District 31, died September 6, 2008;

John "Jack" M. Riley, who served in the 48th and 49th Legislative Assemblies, from District 44, died March 2, 2007;

Leland Sabby, who served in the 54th and 55th Legislative Assemblies, from District 24, died December 7, 2008;

Warren Schuett, who served in the 44th and 45th Legislative Assemblies, from District 25, died December 27, 2007;

Jens Tennefos, who served in the 44th Legislative Assembly, from District 21, died May 14, 2008;

Kenneth Tweten, who served in the 36th through the 39th Legislative Assemblies, from District 7, and in the 40th through the 42nd Legislative Assemblies, from District 18, died April 24, 2008;

Bruce M. Van Sickle, who served in the 35th and 36th Legislative Assemblies, from District 29, died April 21, 2007;

John S. Whittlesey, who served in the 39th Legislative Assembly, from District 9, died July 16, 2008;

Ray H. Wikenheiser, who served in the 56th through the 58th Legislative Assemblies, from District 28, died April 27, 2007; and

**WHEREAS**, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed April 7, 2009

# SENATE MEMORIAL RESOLUTION

## CHAPTER 706

### SENATE MEMORIAL RESOLUTION NO. 8001

(Memorial Resolutions Committee)

A memorial resolution for deceased members of the Senate of North Dakota.

**WHEREAS**, God has summoned to eternal rest our former colleagues:

Arnold Bjorlie, who served in the 31st and 32nd Legislative Assemblies, from District 17, died April 27, 2008;

Richard L. Brown, who served in the 58th and 59th Legislative Assemblies, from District 27, died November 1, 2008;

Harold "Hal" Christensen, who served in the 44th through the 49th Legislative Assemblies, from District 5, died January 15, 2008;

Orville W. Hagen, who served in the 33rd and 34th Legislative Assemblies, from District 41, died June 24, 2007;

Ken Solberg, who served in the 52nd through the 57th Legislative Assemblies, from District 7, died October 7, 2007;

Jens Tennefos, who served in the 45th through the 54th Legislative Assemblies, from District 46, died May 14, 2008;

Bronald Thompson, who served in the 36th through the 39th Legislative Assemblies, from District 20, died October 30, 2007;

Kenneth Tweten, who served in the 43rd and 44th Legislative Assemblies, from District 18, died April 24, 2008; and

**WHEREAS**, we now pause to mourn the passing of our former Senate colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased senators.

Filed March 18, 2009

# SENATE CONCURRENT MEMORIAL RESOLUTION

## CHAPTER 707

### SENATE CONCURRENT MEMORIAL RESOLUTION NO. 8501

(Senators Holmberg, Nething, Triplett)  
(Representatives Glassheim, Martinson, Svedjan)

A concurrent memorial resolution extending sympathy and condolences of the North Dakota Legislative Assembly to the family of the University of North Dakota President Emeritus Thomas J. Clifford.

**WHEREAS**, God in His infinite wisdom has summoned to His side Dr. Thomas J. Clifford on February 4, 2009; and

**WHEREAS**, Dr. Clifford, a native of Langdon, was affiliated with the University of North Dakota for 70 years as a student, faculty member, business dean, vice president, president, and distinguished alumnus; and

**WHEREAS**, Dr. Clifford was the first native North Dakotan to serve as president of the University of North Dakota, and the second University of North Dakota alumnus to achieve presidency of his alma mater serving as the eighth president from 1971 until 1992, being recognized as one of the most effective university presidents in the nation in 1986; and

**WHEREAS**, under Dr. Clifford's leadership, the University of North Dakota evolved into the largest and most comprehensive university in a five-state region: North Dakota, South Dakota, Montana, Wyoming, and Idaho; and several nationally ranked programs were developed under his leadership including a four-year medical school, the Energy and Environmental Research Center, the Center for Innovation, and John D. Odegard School of Aerospace Sciences; and

**WHEREAS**, Dr. Clifford, after being the longest serving president of the University of North Dakota, became the first chancellor of the North Dakota University System; and

**WHEREAS**, Dr. Clifford played a key role in facilitating one of the nation's largest gifts to a public university, resulting in the Ralph Engelstad Arena, the finest college hockey facility in the world; and

**WHEREAS**, Dr. Clifford was held in the highest esteem for his entrepreneurial spirit; leadership and service to his community, state, and nation; and his numerous accomplishments in public and private life reflected his leadership, compassion, and commitment to others to achieve and rise to their potential; and

**WHEREAS**, Dr. Clifford was the recipient of numerous awards and accolades, including the Sioux Award in 1982 and an Honorary Doctorate of Laws

degree from the University of North Dakota in 2000 and was inducted into the North Dakota Rough Rider Hall of Fame in 2002; and

**WHEREAS**, North Dakota and the world lost a unique leader and icon who left an indelible mark upon his state and university and the lives of all those who knew him;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the members of the Sixty-first Legislative Assembly honor Dr. Thomas J. Clifford, pay tribute to his remarkable legacy, extend and offer our sympathy and sincere condolences to his family on behalf of all the citizens of the state of North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State present an enrolled copy of this resolution to Dr. Clifford's wife Gayle Clifford and the families of Dr. Clifford and Gayle Clifford.

Filed February 10, 2009



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1025	4.1-07-20	Create	80
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1025	4.1-13-13	Create	80

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1025	4.1-13-24	Create	80
1025	4.1-13-25	Create	80
1025	4.1-13-26	Create	80
1025	36-04-10	Amend	80
1025	36-04-10.1	Amend	80
1025	36-05-13.2	Amend	80
1025	54-07-01.2 (1)	Amend	80
1026	4-33-11	Amend	86
1026	4.1-47-01	Create	86
1026	4.1-47-02	Create	86
1026	4.1-47-03	Create	86
1026	4.1-47-04	Create	86
1026	4.1-47-05	Create	86
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1026	4.1-47-09	Create	86
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1026	4.1-47-25	Create	86
1026	4.1-47-26	Create	86
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1026	4.1-47-29	Create	86
1026	4.1-47-30	Create	86
1026	4.1-47-31	Create	86
1026	4.1-47-32	Create	86
1026	57-15-06.10	Amend	86
1026	63-01.1	Repeal	86
1027	54-16-03.1	Amend	470
1027	54-16-04.3	Create	460
1029	54-06-32	Create	460
1029	54-06-33	Create	460
1029	54-06-34	Create	460
1029	54-06-35	Create	460
1030	54-06-30	Amend	458
1031	54-06-31	Amend	459
1032	49-22-03 (3)	Amend	406
1032	49-22-03 (12)	Amend	406
1035	65-02-03.1 (1) (a)	Amend	614
1035	65-04-02	Amend	614
1036	65-04-01	Amend	618
1037	65-02-23	Amend	616
1037	65-02-30	Amend	616
1038	50-09-08.6	Amend	420
1039	28-22-01	Amend	276
1039	28-22-02	Amend	276
1039	28-22-03	Amend	276
1039	28-22-03.1	Amend	276
1039	28-22-04	Repeal	276
1039	28-22-05	Amend	276
1039	28-22-07	Amend	276
1039	28-22-15	Amend	276
1039	47-18-01	Amend	276
1039	47-18-04	Amend	276
1039	47-18-14	Amend	276
1039	47-18-16	Amend	276
1040	12-68-01	Create	127
1040	12-68-02	Create	127
1040	12-68-03	Create	127
1040	12-68-04	Create	127
1040	12-68-05	Create	127
1041	12.1-32-15 (13)	Amend	137
1041	12.1-34-01	Amend	137
1041	12.1-34-02	Amend	137
1041	12.1-34-03	Amend	137
1041	12.1-34-06	Amend	137
1042	1-02-12	Amend	65
1042	12.1-12-09	Amend	65

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1042	15.1-13-32	Repeal	65
1042	16.1-01-09	Amend	65
1042	32-42-04	Repeal	65
1042	33-06	Repeal	65
1042	47-32-01	Create	65
1042	47-32-02	Create	65
1042	47-32-03	Create	65
1042	47-32-04	Create	65
1042	54-07-01.2	Amend	65
1042	57-39.2-18	Amend	65
1042	57-40.2-09	Amend	65
1043	50-06-33	Create	414
1044	50-06-34	Create	415
1045	47-05-01	Amend	391
1045	47-05-02 (1)	Amend	391
1045	47-05-17	Amend	391
1048	37-17.1-24	Repeal	308
1048	37-17.1-25	Repeal	308
1048	37-17.1-26	Create	308
1053	37-17.1-06	Amend	304
1053	37-17.1-07	Amend	304
1057	37-14-18	Amend	302
1057	37-18-14	Create	302
1059	54-36-01	Amend	505
1059	54-36-03	Amend	505
1060	54-35-23	Amend	503
1061	65-01-02 (3)	Amend	607
1062	65-05.1-06.1	Amend	629
1062	65-05.1-06.3	Create	629
1063	65-05-29	Amend	626
1064	65-05-09	Amend	621
1064	65-05.2-01	Amend	621
1064	65-05.2-02	Amend	621
1067	54-44.3-20	Amend	511
1069	32-03.2-11 (9)	Amend	285
1070	18-11-28	Create	195
1071	38-08-08 (1)	Amend	314
1071	47-16-39	Amend	314
1072	30.1-01-06	Amend	283
1072	30.1-04-02	Amend	283
1072	30.1-04-03	Amend	283
1072	30.1-04-04	Amend	283
1072	30.1-04-08	Amend	283
1072	30.1-04-09	Amend	283
1072	30.1-04-14	Create	283
1072	30.1-04-15	Create	283
1072	30.1-04-16	Create	283
1072	30.1-04-17	Create	283
1072	30.1-04-18	Create	283
1072	30.1-04-19	Create	283
1072	30.1-04-20	Create	283
1072	30.1-04-21	Create	283
1072	30.1-05-01	Amend	283
1072	30.1-07-01	Amend	283
1072	30.1-07-03	Amend	283
1072	30.1-08-02	Amend	283
1072	30.1-08-04	Amend	283
1072	30.1-09.1-05	Amend	283
1072	30.1-09.1-06	Amend	283
1072	30.1-09.1-07	Amend	283
1072	30.1-10-05	Create	283
1072	30.1-10-06	Create	283
1072	30.1-15-06	Amend	283
1072	30.1-35-01	Amend	283
1073	37-17.4-01	Create	310
1073	37-17.4-02	Create	310
1073	37-17.4-03	Create	310
1073	37-17.4-04	Create	310
1073	37-17.4-05	Create	310
1073	37-17.4-06	Create	310
1073	37-17.4-07	Create	310
1073	37-17.4-08	Create	310
1073	37-17.4-09	Create	310
1073	37-17.4-10	Create	310
1073	37-17.4-11	Create	310
1073	65-06-02.1	Create	310
1073	65-06-05	Amend	310
1074	15-67	Repeal	589
1074	59-21-01	Create	589
1074	59-21-02	Create	589
1074	59-21-03	Create	589
1074	59-21-04	Create	589
1074	59-21-05	Create	589
1074	59-21-06	Create	589
1074	59-21-07	Create	589
1074	59-21-08	Create	589
1078	25-06-01	Amend	240
1078	25-06-01.1	Amend	240
1078	25-06-02 (7)	Create	240
1080	15-39.1-04 (9)	Amend	162
1080	15-39.1-10 (4)	Amend	162
1080	15-39.1-10.6	Amend	162

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1080	15-39.1-19.1 (1)	Amend	162
1080	15-39.1-20	Amend	162
1080	15-39.1-30	Amend	162
1082	57-39.2-03.3	Amend	559
1082	57-40.3-01 (1)	Amend	559
1082	57-40.3-11 (4)	Amend	559
1082	57-43.1-01 (12)	Amend	559
1082	57-43.1-01 (13)	Amend	559
1082	57-43.1-01 (16)	Amend	559
1082	57-43.1-01 (18)	Amend	559
1082	57-43.1-02 (2)	Amend	559
1082	57-43.1-05	Amend	559
1082	57-43.2-01 (16)	Amend	559
1082	57-43.2-01 (17)	Amend	559
1082	57-43.2-01 (20)	Amend	559
1082	57-43.2-02 (2)	Amend	559
1083	57-39.2-12 (1)	Amend	566
1084	12-60-24 (2) (ee)	Create	123
1086	57-35.3-02 (2) (g)	Amend	541
1086	57-38-30.5	Amend	541
1086	57-38-32	Amend	541
1086	57-38-35.2 (1) (c)	Amend	541
1086	57-38.1-17.1	Amend	541
1087	5-01-04	Amend	87
1087	5-01-14	Amend	87
1088	5-01-16 (5)	Amend	87
1088	57-38-57 (1)	Amend	554
1088	57-38-57 (5)	Amend	554
1088	57-39.2-23 (1)	Amend	554
1089	12-46-03	Repeal	273
1089	12-46-04	Amend	273
1089	12-46-05	Repeal	273
1089	12-46-06	Repeal	273
1089	12-46-09	Amend	273
1089	12-46-10	Amend	273
1089	12-46-10.1	Amend	273
1089	12-46-11	Repeal	273
1089	12-46-18	Amend	273
1089	12-46-19	Repeal	273
1089	12-46-20	Repeal	273
1089	12-46-22	Repeal	273
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1089	27-21-12 (8)	Create	273
1089	27-21-12 (9)	Create	273
1090	50-33-01	Create	436
1090	50-33-02	Create	436
1090	50-33-03	Create	436
1090	50-33-04	Create	436
1090	50-33-05	Create	436
1090	50-33-06	Create	436
1090	50-33-07	Create	436
1090	50-33-08	Create	436
1091	43-15-25.1	Amend	366
1091	43-15-31.3	Amend	366
1093	43-41-02 (4)	Amend	378
1093	43-41-04 (4)	Amend	378
1093	43-41-08	Amend	378
1094	27-20-02 (15)	Amend	267
1094	27-20-32.2	Amend	267
1094	27-20-38	Amend	267
1094	50-11-00.1 (5)	Amend	267
1095	50-11.3-02	Amend	424
1095	50-12-02	Amend	424
1095	50-12-03	Amend	424
1095	50-12-03.1	Amend	424
1095	50-12-03.2 (1)	Amend	424
1095	50-12-03.2 (1)	Amend	424
1096	6-03-13.1	Amend	97
1098	23-37-01	Amend	227
1098	23-37-02	Amend	227
1098	23-37-03	Amend	227
1098	23-37-04	Amend	227
1098	23-37-05	Amend	227
1098	23-37-06	Amend	227
1098	23-37-07	Amend	227
1098	23-37-08	Amend	227
1098	23-37-09	Amend	227
1098	23-37-10	Amend	227
1098	23-37-11	Amend	227
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1098	23-37-14	Amend	227
1098	23-37-15	Amend	227
1098	23-37-16	Amend	227
1098	23-37-17	Amend	227
1098	23-37-18	Amend	227
1098	23-37-19	Amend	227
1098	23-37-20	Amend	227
1098	23-37-21	Amend	227
1098	23-37-22	Amend	227
1098	23-37-23	Amend	227
1098	23-37-24	Amend	227
1098	23-37-25	Amend	227

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1098	23-37-27	Amend		227
1098	23-37-28	Amend		227
1098	23-37-29	Amend		227
1098	23-37-30	Amend		227
1099	34-14-09	Amend		292
1100	10-04-02 (9) (m)	Amend		107
1100	10-04-06 (4)	Amend		107
1100	10-04-06 (5)	Amend		107
1100	10-04-06 (11)	Amend		107
1100	10-04-06 (13)	Amend		107
1100	10-04-06 (17) (j)	Create		107
1100	10-04-08 (2)	Amend		107
1100	10-04-08.4 (2)	Amend		107
1101	65-05-08 (10)	Amend		619
1101	65-05-08.2	Amend		619
1101	65-05-09	Amend		619
1101	65-05-10	Amend		619
1101	65-05-15 (4)	Amend		619
1101	65-05-17	Amend		619
1101	65-05-26	Amend		619
1102	43-30-11	Amend		374
1103	43-30-16 (8)	Amend		375
1104	32-12-2-1 (1)	Amend		287
1105	19-03-1-07 (3)	Amend		199
1105	19-03-1-07 (5)	Amend		199
1105	19-03-1-09 (7)	Amend		199
1105	19-03-1-11 (4)	Amend		199
1107	11-09-1-14	Create		112
1107	12-1-32-08 (4)	Amend		112
1107	27-20-49	Amend		112
1107	29-07-01.1 (1)	Amend		112
1107	29-07-01.1 (2)	Amend		112
1107	29-07-01.1 (3)	Amend		112
1108	27-20-26	Amend		270
1109	4-01-26	Create		70
1109	4-1-02-01	Amend		70
1109	4-1-02-03	Amend		70
1109	4-1-02-09	Amend		70
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1109	4-1-07-01	Amend		70
1109	4-1-07-03	Amend		70
1109	4-1-07-08	Amend		70
1109	4-1-09-01	Amend		70
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1109	4-1-10-05	Amend		70
1109	4-1-10-06	Amend		70
1109	4-1-11-01	Amend		70
1109	4-1-11-03	Amend		70
1109	4-1-11-08	Amend		70
1110	36-26-01	Create		300
1110	36-26-02	Create		300
1110	36-26-03	Create		300
1110	36-26-04	Create		300
1110	36-26-05	Create		300
1111	4-30-01 (21)	Create		75
1111	4-30-01 (33)	Create		75
1111	4-30-18	Amend		75
1111	4-30-20	Amend		75
1111	4-30-36	Amend		75
1111	4-30-36.2	Amend		75
1111	4-30-36.3	Amend		75
1111	4-30-36.4	Amend		75
1111	4-30-39	Amend		75
1111	4-30-45.1	Amend		75
1112	36-24-26	Amend		299
1113	54-44.3-12.2	Amend		510
1114	21-10-06	Amend		210
1115	54-27-11	Amend		478
1116	43-10-06.3	Create		360
1116	43-10-10.1 (6)	Amend		360
1116	43-10-13	Amend		360
1116	43-10-14	Amend		360
1116	43-10-15	Amend		360
1116	43-10-15.1	Amend		360
1116	43-10-23	Amend		360
1116	43-10-23	Amend		360
1121	52-09-20 (9)	Amend		449
1122	32-12-2-15	Amend		289
1123	54-01-27	Amend		456
1124	18-13-01	Create		197
1125	4-01-17.1	Amend		67
1126	57-51.1-07.3	Amend		580
1127	12-62-01.1	Amend		125
1127	19-03.1-32 (1)	Amend		125
1127	44-04-23	Repeat		125
1127	54-12-14 (5)	Amend		125
1127	54-12-15	Repeat		125
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1128	37-17.1-16	Amend		307

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1129	54-10-19	Amend	463
1130	54-27-19 (2)	Amend	479
1131	57-40.3-01 (5)	Amend	567
1131	57-40.3-02 (1)	Amend	567
1132	39-06-03 (2)	Amend	328
1132	39-06-19 (3)	Amend	328
1132	39-06.2-09 (1)	Amend	328
1132	39-06.2-10 (17)	Amend	328
1132	39-16-29	Repeal	328
1132	39-20-03.1	Amend	328
1132	39-20-03.2 (2)	Amend	328
1132	39-20-04.1 (1)	Amend	328
1133	39-04-17	Amend	325
1133	39-05-17	Amend	325
1134	39-20-03.1	Amend	340
1135	57-40.6-12	Amend	570
1136	26.1-01-07	Amend	242
1136	26.1-01-08.1	Amend	242
1137	47-30.1-35	Amend	400
1138	37-07.1-02	Amend	301
1138	37-07.1-06.1	Repeal	301
1138	37-07.2-01	Amend	301
1139	15-05-07	Amend	154
1140	57-51.1-07.2	Amend	579
1141	26.1-01-07 (15)	Amend	243
1142	26.1-26-31.1 (1)	Amend	253
1143	6-06-08 (1)	Amend	99
1144	50-06-15	Amend	431
1145	43-32-01	Amend	376
1145	43-32-08.1	Amend	376
1145	43-32-13	Amend	376
1145	43-32-17	Amend	376
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1145	43-32-19.1	Create	376
1145	43-32-20	Amend	376
1145	43-32-20.1	Amend	376
1145	43-32-27	Amend	376
1145	43-32-27.1 (1)	Amend	376
1145	43-32-30	Amend	376
1146	54-61-01 (1)	Amend	520
1146	54-61-04	Amend	520
1147	43-02.2-02	Amend	357
1147	43-02.2-04	Amend	357
1147	43-02.2-04.1	Amend	357
1147	43-02.2-06 (1)	Amend	357
1147	43-02.2-06 (5)	Amend	357
1147	43-02.2-09 (1)	Amend	357
1147	43-02.2-10	Amend	357
1147	43-02.2-11 (1)	Amend	357
1147	43-02.2-11 (3)	Amend	357
1147	43-02.2-12 (1)	Amend	357
1147	43-02.2-12 (2)	Amend	357
1147	43-02.2-12 (3)	Amend	357
1147	43-02.2-12 (5)	Amend	357
1147	43-02.2-12 (6)	Amend	357
1147	43-02.2-12 (7)	Amend	357
1148	54-10-15	Amend	465
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1151	65-04-15	Amend	608
1152	6-01-04.1	Amend	94
1153	39-04-19 (1)	Amend	326
1153	39-04-39.3	Amend	326
1153	39-05-30	Amend	326
1153	39-16-10 (3)	Amend	326
1154	6-01-02 (20)	Create	93
1155	6-03-06	Amend	96
1156	47-16-07.1 (2)	Amend	393
1156	47-30.1-08	Amend	393
1157	50-24.1-07	Amend	428
1158	26.1-40-18	Amend	259
1159	27-20-54	Amend	272
1161	39-06-03.1	Amend	329
1161	39-06-07 (2)	Amend	329
1161	39-06-07.1	Amend	329
1161	39-06-19 (3)	Amend	329
1161	39-06.2-08 (1)	Amend	329
1162	44-08-22	Create	388
1163	57-33.1-07	Amend	1-38
1164	57-53.1-08	Amend	578
1165	54-17-07.3 (2)	Amend	471
1166	57-02-27.1	Amend	530
1166	57-02-27.2	Amend	530
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1168	54.1-09	Repeal		468
1171	15.1-23-01	Amend		177
1171	15.1-23-03	Amend		177
1171	15.1-23-06	Amend		177
1171	15.1-23-08	Amend		177
1171	15.1-23-17	Amend		177
1173	54-52-04 (14)	Create		515
1175	14-09-08.2 (5)	Amend		419
1175	14-09-09.10 (3)	Amend		419
1175	14-09-09.24 (4)	Amend		419
1175	14-09-09.24 (5)	Amend		419
1175	14-09-09.3 (1)	Amend		419
1175	14-09-09.3 (2)	Amend		419
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1175	14-09-09.33 (5)	Amend		419
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1175	20.1-01-26.1	Amend		419
1175	26.1-02-28	Create		419
1175	34-15-06	Amend		419
1175	35-34-06 (1)	Amend		419
1175	50-09-02.1 (2)	Amend		419
1175	50-09-08.2 (1)	Amend		419
1175	50-09-08.2 (5)	Amend		419
1175	50-09-14 (2)	Amend		419
1175	50-09-36	Amend		419
1175	50-09-40	Create		419
1175	50-24.1-02.1	Amend		419
1176	43-20-01	Repeal		369
1176	43-20-01.1	Create		369
1176	43-20-01.2	Create		369
1176	43-20-01.3	Create		369
1176	43-20-01.4	Create		369
1176	43-20-02	Repeal		369
1176	43-20-03	Amend		369
1176	43-20-05	Amend		369
1176	43-20-06	Amend		369
1176	43-20-07	Repeal		369
1176	43-20-08	Amend		369
1176	43-20-09	Amend		369
1176	43-20-10	Amend		369
1176	43-20-12.1	Repeal		369
1176	43-20-12.2	Amend		369
1176	43-20-13.1	Amend		369
1176	43-20-13.2	Create		369
1176	43-28-01	Amend		369
1176	43-28-02 (8)	Create		369
1176	43-28-06 (2)	Amend		369
1176	43-28-10	Amend		369
1176	43-28-10.1	Create		369
1176	43-28-11	Amend		369
1176	43-28-12	Repeal		369
1176	43-28-12.1	Repeal		369
1176	43-28-12.2	Repeal		369
1176	43-28-13	Amend		369
1176	43-28-14	Repeal		369
1176	43-28-15	Amend		369
1176	43-28-16	Amend		369
1176	43-28-16.2	Create		369
1176	43-28-17	Amend		369
1176	43-28-18	Amend		369
1176	43-28-18.1 (1)	Amend		369
1176	43-28-18.2	Create		369
1176	43-28-18.3	Create		369
1176	43-28-19	Repeal		369
1176	43-28-20	Repeal		369
1176	43-28-21	Repeal		369
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1181	37-29-02	Create		313
1181	37-29-03	Create		313
1181	37-29-04	Create		313
1181	54-06-27	Amend		313
1184	51-31-04 (1)	Amend		437
1186	12.1-27.1-01 (13)	Create		133
1186	12.1-27.1-03.3	Create		133
1186	12.1-31-08	Repeal		133
1188	20.1-01-26	Amend		202
1188	20.1-01-33	Create		202
1192	26.1-01-07 (27)	Create		252
1192	26.1-26-13.4	Create		252
1192	26.1-26-20	Amend		252
1192	26.1-26-31	Amend		252
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1194	53-06.1-01 (7)	Amend	451
1194	53-06.1-03 (1)	Amend	451
1195	22-02-10	Create	211
1196	26.1-36.4-06	Amend	258
1199	57-38.3-02 (1)	Amend	555
1201	65-01-16 (6)	Amend	612
1201	65-01-16 (7)	Amend	612
1201	65-02-27	Amend	612
1202	6-09-15	Amend	109
1202	10-30.5-04	Amend	109
1202	10-30.5-12	Create	109
1202	54-60.1-01 (2) (b)	Amend	109
1204	26.1-36-04 (2)	Amend	256
1204	26.1-36-05 (15)	Create	256
1204	26.1-36-09.13	Create	256
1204	54-52.1-04.12	Create	256
1205	32-03.4-01	Create	286
1205	32-03.4-02	Create	286
1205	32-03.4-03	Create	286
1205	32-03.4-04	Create	286
1205	32-03.4-05	Create	286
1205	32-03.4-06	Create	286
1205	32-03.4-07	Create	286
1205	32-03.4-08	Create	286
1205	32-03.4-09	Create	286
1205	32-03.4-10	Create	286
1205	32-03.4-11	Create	286
1205	32-03.4-12	Create	286
1205	32-03.4-13	Create	286
1207	6-08.1-02 (13)	Create	266
1207	27-13-14	Create	266
1209	57-38-29.3	Create	550
1209	57-38-30.3 (7)	Amend	550
1215	23-27-04.4	Amend	224
1215	23-27-04.9	Create	224
1217	20.1-01-22	Amend	201
1219	39-20-01.1	Amend	339
1220	44-04-17.1 (8)	Amend	362
1223	12-67-01	Amend	126
1223	12-67-02	Amend	126
1223	12-67-03	Amend	126
1223	12-67-04	Amend	126
1229	35-36-01	Create	294
1229	35-36-02	Create	294
1229	35-36-03	Create	294
1229	35-36-04	Create	294
1229	35-36-05	Create	294
1229	35-36-06	Create	294
1229	35-36-07	Create	294
1229	35-36-08	Create	294
1229	35-36-09	Create	294
1232	47-24.1-10	Amend	398
1233	39-03-18	Amend	319
1233	57-02-08 (22)	Amend	525
1234	57-51.1-03 (9)	Amend	577
1237	12-44.1-30	Create	117
1238	12-44.1-02	Amend	115
1238	12-44.1-31	Create	115
1239	20.1-01-17	Amend	200
1240	20.1-03-36.1 (4)	Amend	206
1244	12.1-11-07	Amend	128
1245	26.1-41-03	Amend	260
1249	5-01-19	Create	89
1249	5-03-06	Amend	89
1249	5-03-07	Amend	89
1252	14-03-20.2	Create	146
1256	57-38-30.3 (2) (d)	Amend	551
1257	11-09.1-03 (2)	Amend	111
1257	40-05.1-06 (2)	Amend	111
1263	50-32-05	Create	435
1264	21-09-05	Amend	209
1266	40-57-02 (2)	Amend	352
1266	40-57-03 (11)	Amend	352
1266	40-57-04	Amend	352
1266	40-57-05	Amend	352
1266	40-57-07	Amend	352
1266	40-57-14	Amend	352
1266	40-57-19.1 (1)	Amend	352
1269	43-12.1-14	Amend	362
1269	43-12.1-14.2	Create	362
1270	4.1-14-01	Create	85
1270	4.1-14-02	Create	85
1270	4.1-14-03	Create	85
1270	4.1-14-04	Create	85
1270	63-01.1-12.2	Repeal	85
1271	11-07-01	Amend	110
1271	11-07-02	Amend	110
1271	11-07-03	Amend	110
1271	11-07-03.1	Repeal	110
1271	11-11-02	Amend	110
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1272	12.1-20-04	Amend	131
1273	15.1-25-01	Amend	178
1277	57-38-30.3 (7) (o)	Create	552
1278	61-24.5-04	Amend	601
1278	61-24.5-07	Amend	601
1278	61-24.5-08	Amend	601
1284	10-04-02 (19)	Amend	254
1284	10-04-02 (21)	Amend	254
1284	26.1-33.3	Repeal	254
1284	26.1-33.4-01	Create	254
1284	26.1-33.4-02	Create	254
1284	26.1-33.4-03	Create	254
1284	26.1-33.4-04	Create	254
1284	26.1-33.4-05	Create	254
1284	26.1-33.4-06	Create	254
1284	26.1-33.4-07	Create	254
1284	26.1-33.4-08	Create	254
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1284	26.1-33.4-13	Create	254
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1284	26.1-33.4-15	Create	254
1284	26.1-33.4-16	Create	254
1286	61-04-01.1 (3)	Amend	593
1286	61-04-01.1 (6)	Amend	593
1287	39-06.1-10 (7)	Amend	333
1288	12.1-08-11	Amend	279
1288	20.1-02-14.1	Amend	279
1288	29-05-31	Amend	279
1288	39-06-31	Amend	279
1289	57-39.2-03 (5)	Create	557
1289	57-39.2-01 (11)	Create	557
1289	57-39.2-04 (45)	Amend	557
1289	57-39.5-02	Amend	557
1291	14-07.1-19	Create	147
1294	26.1-01-07.1 (3)	Amend	248
1294	26.1-21-07	Amend	248
1294	26.1-21-09	Amend	248
1294	26.1-21-10	Amend	248
1294	26.1-21-24	Create	248
1295	39-06-14 (3) (c)	Amend	345
1295	39-27-05 (3)	Amend	345
1295	39-29.2-01	Create	345
1295	39-29.2-02	Create	345
1295	39-29.2-03	Create	345
1295	39-29.2-04	Create	345
1296	27-08.1-01 (1)	Amend	263
1296	27-08.1-03	Amend	263
1298	10-01.1-03 (2)	Amend	106
1298	10-01.1-06	Amend	106
1298	10-15-36 (3)	Amend	106
1298	10-15-38 (5)	Amend	106
1298	10-15-52.3	Amend	106
1298	10-19.1-01	Amend	106
1298	10-19.1-10	Amend	106
1298	10-19.1-23	Amend	106
1298	10-19.1-43 (1)	Amend	106
1298	10-19.1-46	Amend	106
1298	10-19.1-48 (1)	Amend	106
1298	10-19.1-51 (2)	Amend	106
1298	10-19.1-75 (1)	Amend	106
1298	10-19.1-76.2	Amend	106
1298	10-19.1-87 (6)	Amend	106
1298	10-19.1-91 (1)	Amend	106
1298	10-19.1-104.4 (3)	Amend	106
1298	10-19.1-105	Amend	106
1298	10-19.1-107	Amend	106
1298	10-19.1-124 (4)	Create	106
1298	10-19.1-137 (2)	Amend	106
1298	10-19.1-146	Amend	106
1298	10-19.1-147 (26)	Amend	106
1298	10-19.1-148 (5)	Amend	106
1298	10-32-02	Amend	106
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1298	10-32-06	Amend	106
1298	10-32-10 (1)	Amend	106
1298	10-32-18	Amend	106
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1298	10-32-110	Amend	106
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1298	10-33-01	Amend	106	
1298	10-33-18	Amend	106	
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1298	10-33-44 (1)	Amend	106	
1298	10-33-46 (2)	Amend	106	
1298	10-33-84 (1)	Amend	106	
1298	10-33-115 (4)	Create	106	
1298	10-33-130	Amend	106	
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1298	10-33-140 (5)	Amend	106	
1298	10-33-141 (5)	Amend	106	
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1298	10-36-02	Create	106	
1298	10-36-03	Create	106	
1298	10-36-04	Create	106	
1298	10-36-05	Create	106	
1298	10-36-06	Create	106	
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1298	45-10.2-02 (28)	Amend	106	
1298	45-10.2-21	Amend	106	
1298	45-10.2-24 (8)	Amend	106	
1298	45-10.2-41 (3)	Amend	106	
1298	45-10.2-64	Amend	106	
1298	45-10.2-81 (2)	Amend	106	
1298	45-10.2-97 (3)	Amend	106	
1298	45-10.2-109 (26)	Amend	106	
1298	45-10.2-111 (5)	Amend	106	
1298	45-11-08.2 (3)	Create	106	
1298	45-13-01 (17)	Amend	106	
1298	45-13-01 (18)	Amend	106	
1298	45-22-01 (15)	Amend	106	
1298	45-22-01 (16)	Amend	106	
1298	45-22-03 (3)	Amend	106	
1298	45-22-22 (2)	Amend	106	
1298	45-22-23 (3)	Amend	106	
1298	45-23-01 (18)	Amend	106	
1298	45-23-01 (19)	Amend	106	
1298	45-23-08 (26)	Amend	106	
1300	59-12-11 (1)	Amend	588	
1301	11-18-02.2	Amend	327	
1301	35-01-05.1	Amend	327	
1301	39-05-01	Amend	327	
1301	39-05-02.2	Amend	327	
1301	39-05-09	Amend	327	
1301	39-05-09.2	Amend	327	
1301	39-05-19	Amend	327	
1301	39-05-20	Amend	327	
1301	39-05-22	Amend	327	
1301	39-05-35	Create	327	
1301	47-01-03	Amend	327	
1301	47-10-26	Create	327	
1301	57-02-04	Amend	327	
1301	57-55-01	Amend	327	
1301	57-55-10 (2)	Amend	327	
1302	28-01-46	Amend	274	
1303	50-24.4-06	Amend	430	
1304	57-51-15	Amend	575	
1306	12-59-22	Create	469	
1306	12.1-32-07 (3)	Amend	469	
1306	28-32-01 (2)	Create	469	
1306	39-06.1-11 (5)	Create	469	
1306	54-12-27	Create	469	
1306	54-12-29	Create	469	
1306	54-12-29	Create	469	
1306	54-12-30	Create	469	
1306	54-12-31	Create	469	
1307	50-24.4-07	Amend	431	
1308	51-33-04 (2)	Amend	438	
1311	12-60-16.1	Amend	122	
1311	12-60-16.6	Amend	122	
1317	53-06.1-12 (2)	Amend	453	
1318	39-24-09 (7)	Amend	343	
1321	61-06-09	Amend	594	
1321	61-06-10	Amend	594	
1321	61-06-11	Amend	594	
1321	61-06-13	Amend	594	
1321	61-06-14	Amend	594	
1321	61-06-15	Amend	594	
1321	61-06-16	Amend	594	
1322	17-07-01	Create	192	
1323	23-06-03	Amend	215	
1323	23-06-31	Create	215	
1324	6-09.8-01 (1)	Amend	545	
1324	10-33-124 (4)	Amend	545	

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1324	11-37-08 (5)	Amend	545
1324	27-17-06	Amend	545
1324	37-28-07	Amend	545
1324	40-63-04 (1)	Amend	545
1324	40-63-04 (3)	Amend	545
1324	40-63-06	Amend	545
1324	40-63-07 (4)	Amend	545
1324	57-38-01.14	Amend	545
1324	57-38-01.16	Amend	545
1324	57-38-01.17	Amend	545
1324	57-38-01.18	Repeal	545
1324	57-38-01.2	Repeal	545
1324	57-38-01.20 (1)	Amend	545
1324	57-38-01.21 (2)	Amend	545
1324	57-38-01.21 (4)	Amend	545
1324	57-38-01.22	Amend	545
1324	57-38-01.23	Amend	545
1324	57-38-01.24	Amend	545
1324	57-38-01.25	Amend	545
1324	57-38-01.26	Amend	545
1324	57-38-01.27 (6)	Amend	545
1324	57-38-01.29 (1)	Amend	545
1324	57-38-01.30 (1)	Amend	545
1324	57-38-01.7 (1)	Amend	545
1324	57-38-01.7 (2)	Amend	545
1324	57-38-01.8 (1)	Amend	545
1324	57-38-01.8 (4)	Amend	545
1324	57-38-02	Repeal	545
1324	57-38-04	Amend	545
1324	57-38-06.1	Repeal	545
1324	57-38-08.1 (2)	Amend	545
1324	57-38-29	Repeal	545
1324	57-38-29.2	Repeal	545
1324	57-38-30.3	Amend	545
1324	57-38-30.4	Repeal	545
1324	57-38-30.5	Amend	545
1324	57-38-40 (1) (b)	Amend	545
1324	57-38-67	Repeal	545
1324	57-38-68	Repeal	545
1324	57-38-69	Repeal	545
1324	57-38-70	Repeal	545
1324	57-38.5-03	Amend	545
1324	57-38.6-03	Amend	545
1324	57-51-15 (3)	Amend	545
1326	36-01-33	Create	296
1329	14-09-09.3 (10)	Create	148
1329	14-09-09.7	Amend	148
1330	43-03-01	Amend	358
1330	43-03-02	Amend	358
1330	43-03-03	Amend	358
1330	43-03-04	Amend	358
1330	43-03-05	Amend	358
1330	43-03-06	Amend	358
1330	43-03-08	Amend	358
1330	43-03-09	Amend	358
1330	43-03-10	Amend	358
1330	43-03-11	Amend	358
1330	43-03-12	Repeal	358
1330	43-03-13	Amend	358
1330	43-03-14	Amend	358
1330	43-03-15	Amend	358
1330	43-03-16	Amend	358
1330	43-03-17	Amend	358
1330	43-03-18	Amend	358
1330	43-03-19	Amend	358
1330	43-03-20	Amend	358
1330	43-03-22	Amend	358
1330	43-03-24	Repeal	358
1330	43-03-25	Repeal	358
1333	27-20-03 (1) (d)	Create	268
1334	12.1-32-15 (7)	Amend	136
1336	12.1-31.2-02	Create	134
1336	14-07.1-13	Repeal	134
1336	29-06-15 (1)	Amend	134
1339	23-42-01	Create	228
1339	23-42-02	Create	228
1339	23-42-03	Create	228
1339	23-42-04	Create	228
1339	23-42-05	Create	228
1339	23-42-06	Create	228
1340	24-01-04	Amend	229
1340	24-01-04.1	Create	229
1342	49-10.1-21	Create	405
1342	49-11-00.1	Create	405
1342	49-11-21	Amend	405
1342	49-11-22	Amend	405
1343	16.1-11.1-01	Amend	185
1344	21-04-09	Amend	208
1344	21-06-07	Amend	208
1345	5-02-02	Amend	90
1346	40-01.1-02	Amend	346
1351	62.1-02-05	Amend	603

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1353	24-01-41.2	Create	230
1353	49-21-01.3	Amend	230
1353	49-21-04	Amend	230
1360	15-39.1-04 (11)	Amend	163
1360	15-39.1-23	Amend	163
1360	15.1-09.1-11	Create	163
1360	65-01-02 (17)	Amend	163
1360	65-04-04	Amend	163
1361	43-55-03	Amend	380
1361	43-55-05	Amend	380
1361	43-55-08 (9)	Create	380
1361	43-55-09	Create	380
1361	43-55-10	Create	380
1362	52-04-24	Amend	446
1365	12.1-23-15	Create	132
1367	53-06.1-03 (1)	Amend	452
1368	18-13-01	Create	196
1368	18-13-02	Create	196
1368	18-13-03	Create	196
1368	18-13-04	Create	196
1368	18-13-05	Create	196
1368	18-13-06	Create	196
1368	18-13-07	Create	196
1368	18-13-08	Create	196
1368	18-13-09	Create	196
1368	18-13-10	Create	196
1369	44-08-23	Create	389
1370	38-18.1-03	Amend	317
1370	38-18.1-04	Amend	317
1370	38-18.1-05	Amend	317
1370	38-18.1-06	Amend	317
1370	38-18.1-06.1	Create	317
1371	14-02.1-04	Amend	144
1371	14-02.1-07	Amend	144
1378	15.1-06-01	Amend	171
1378	15.1-22-02	Amend	171
1382	57-06-03	Amend	532
1383	54-17.7-02 (6)	Amend	473
1383	54-17.7-04 (3)	Amend	473
1385	50-24.6-02	Amend	433
1385	50-24.6-04	Amend	433
1386	15-12-20	Amend	160
1386	23-36-03	Amend	160
1389	62.1-02-05	Amend	604
1392	57-38-01.3 (1) (k)	Create	543
1394	15-70-01	Amend	170
1394	15-70-04	Amend	170
1394	15-70-05	Amend	170
1394	57-51.1-07.4	Amend	170
1399	15-68.1-01	Create	169
1399	15-68.1-02	Create	169
1399	15-68.1-03	Create	169
1400	15-20.1-24	Create	175
1400	15-20.1-25	Create	175
1400	15.1-02-19	Create	175
1400	15.1-02-20	Create	175
1400	15.1-06-04	Amend	175
1400	15.1-06-19	Create	175
1400	15.1-06-20	Create	175
1400	15.1-07-32	Create	175
1400	15.1-07-33	Create	175
1400	15.1-09-59	Create	175
1400	15.1-09.1-10	Amend	175
1400	15.1-13-33	Create	175
1400	15.1-18.2-01	Create	175
1400	15.1-18.2-02	Create	175
1400	15.1-18.2-03	Create	175
1400	15.1-21-02	Amend	175
1400	15.1-21-02.1	Amend	175
1400	15.1-21-02.2	Repeal	175
1400	15.1-21-02.3	Create	175
1400	15.1-21-02.4	Create	175
1400	15.1-21-02.5	Create	175
1400	15.1-21-02.6	Create	175
1400	15.1-21-02.7	Create	175
1400	15.1-21-16	Create	175
1400	15.1-21-17	Create	175
1400	15.1-21-18	Create	175
1400	15.1-21-19	Create	175
1400	15.1-21-20	Create	175
1400	15.1-21-21	Create	175
1400	15.1-21-22	Create	175
1400	15.1-23-03	Amend	175
1400	15.1-23-17	Amend	175
1400	15.1-27-03.1	Amend	175
1400	15.1-27-04.1	Amend	175
1400	15.1-27-07.2	Amend	175
1400	15.1-27-11	Amend	175
1400	15.1-27-19	Amend	175
1400	15.1-27-20.1	Repeal	175
1400	15.1-27-35	Amend	175

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1400	15.1-27-41	Amend	175
1400	15.1-27-43	Create	175
1400	15.1-27-44	Create	175
1400	15.1-32-18	Amend	175
1400	15.1-36-01	Amend	175
1400	15.1-37-02	Create	175
1400	15.1-37-03	Create	175
1400	15.1-37-04	Create	175
1400	15.1-38-01.1	Amend	175
1400	15.1-38-01.2	Repeal	175
1400	57-15-14	Amend	175
1401	57-13-04.1	Create	534
1402	4.1-13-15	Amend	84
1412	57-40.6-02	Amend	569
1413	4.1-04-04	Amend	82
1413	4.1-04-04.1	Create	82
1413	4.1-04-10	Amend	82
1414	39-04-10.14	Create	323
1416	12-60-08.1	Create	121
1416	12.1-32-15	Amend	121
1416	12.1-32-15	Amend	121
1416	12.1-32-15	Amend	121
1416	12.1-32-15	Amend	121
1416	12.1-32-15	Amend	121
1416	29-05-11.1	Create	121
1418	50-11.1-14.1	Create	425
1420	40-40-10	Amend	349
1428	40-63-03 (1) (c)	Amend	354
1428	40-63-03 (1) (f)	Amend	354
1428	40-63-07 (5)	Amend	354
1430	32-46-01	Create	290
1430	32-46-02	Create	290
1430	32-46-03	Create	290
1430	32-46-04	Create	290
1430	32-46-05	Create	290
1430	32-46-06	Create	290
1433	50-24.4-16	Amend	432
1436	15.1-21-02.2	Amend	176
1436	1-02-06.1	Amend	482
1436	1-02-09 (2)	Amend	482
1436	1-02-09.2	Amend	482
1436	4-05.1-19	Amend	482
1436	15-10-42	Amend	482
1436	15-10-43	Amend	482
1436	15-11-39	Amend	482
1436	15-39.1-05.2 (5)	Amend	482
1436	15.1-02-13 (3)	Amend	482
1436	15.1-02-15	Amend	482
1436	15.1-06-08 (3)	Amend	482
1436	15.1-06-08.1 (4)	Amend	482
1436	15.1-21-17	Amend	482
1436	12.1-01-17	Amend	482
1436	18-11-15 (5)	Amend	482
1436	24-02-46	Amend	482
1436	25-01.3-02 (3)	Amend	482
1436	25-02-01.1 (3)	Amend	482
1436	26.1-36.4-06	Amend	482
1436	28-32-03	Amend	482
1436	28-32-06	Amend	482
1436	28-32-07	Amend	482
1436	28-32-10 (1)	Amend	482
1436	28-32-15	Amend	482
1436	28-32-17	Amend	482
1436	28-32-18	Amend	482
1436	28-32-19	Amend	482
1436	28-32-20	Amend	482
1436	34-11.1-01 (3)	Amend	482
1436	40-63-03 (2)	Amend	482
1436	44-04-18.6	Amend	482
1436	48-08-04	Amend	482
1436	48-10-01	Amend	482
1436	49-21-22.2	Repeal	482
1436	49-23-03 (4)	Amend	482
1436	50-09-29 (3)	Amend	482
1436	50-09-29 (4)	Amend	482
1436	52-02-18	Amend	482
1436	54-03-02	Amend	482
1436	54-03-04	Amend	482
1436	54-03-19.2	Amend	482
1436	54-03-20 (2)	Amend	482
1436	54-03-26	Amend	482
1436	54-03-27	Amend	482
1436	54-03.1-02	Amend	482
1436	54-03.2-02	Amend	482
1436	54-05.1-02	Amend	482
1436	54-06-25 (3)	Amend	482
1436	54-06-25 (4)	Amend	482
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1436	54-35-01	Amend	482
1436	54-35-02	Amend	482
1436	54-35-02.1	Amend	482

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1436	54-35-02.3	Amend	482
1436	54-35-02.4	Amend	482
1436	54-35-02.5	Amend	482
1436	54-35-02.6	Amend	482
1436	54-35-02.7	Amend	482
1436	54-35-02.8	Amend	482
1436	54-35-03	Amend	482
1436	54-35-04	Amend	482
1436	54-35-05	Amend	482
1436	54-35-06	Amend	482
1436	54-35-07	Amend	482
1436	54-35-08	Amend	482
1436	54-35-09	Amend	482
1436	54-35-10	Amend	482
1436	54-35-11	Amend	482
1436	54-35-12	Amend	482
1436	54-35-13	Amend	482
1436	54-35-15.1	Amend	482
1436	54-35-16	Amend	482
1436	54-35-17	Amend	482
1436	54-35-18	Amend	482
1436	54-35-22	Amend	482
1436	54-35-23	Amend	482
1436	54-35.2-01	Amend	482
1436	54-35.2-02	Amend	482
1436	54-35.2-04	Amend	482
1436	54-35.2-05	Amend	482
1436	54-40-01 (3)	Amend	482
1436	54-44.1-12.1	Amend	482
1436	54-52.1-08.2	Amend	482
1436	54-55-01	Amend	482
1436	54-55-04	Amend	482
1436	54-58-03	Amend	482
1436	54-59-07	Amend	482
1436	54-59-11	Amend	482
1436	54-59-12	Amend	482
1436	54-59-23	Amend	482
1436	54-60-03 (10)	Amend	482
1436	54-60-11	Amend	482
1436	54-62-03	Amend	482
1436	57-40.6-12	Amend	482
1436	61-24-04	Amend	482
1436	61-24.5-04	Amend	482
1436	65-02-30	Amend	482
1436	65-06.2-09	Amend	482
1437	12-60-24 (2) (ff)	Create	377
1437	43-34-02 (1)	Amend	377
1437	43-34-03	Amend	377
1437	43-34-03.2	Create	377
1437	43-34-05	Amend	377
1437	43-34-11	Amend	377
1437	43-34-12	Amend	377
1438	39-06.2-02	Amend	334
1438	39-06.2-08	Amend	334
1438	39-06.2-09	Amend	334
1438	39-06.2-09.1	Create	334
1445	14-02.1-02	Amend	142
1448	57-38-01.29 (9)	Create	548
1449	49-02-27	Amend	404
1449	49-22-03 (5) (a)	Amend	404
1451	37-17.1-10	Amend	306
1451	37-17.1-10.1	Create	306
1452	16.1-13-08.1	Create	186
1455	65-05-38	Create	627
1458	59-09-03 (11)	Create	587
1458	59-16-13	Amend	587
1458	59-17-06	Amend	587
1458	59-18-01.1	Create	587
1459	4-01-27	Create	71
1460	54-44-17	Create	508
1461	16.1-07-15 (2) (c)	Amend	183
1463	54-07-08	Create	461
1463	54-07-09	Create	461
1463	54-07-10	Create	461
1463	54-07-11	Create	461
1464	54-44.3-20 (14)	Amend	611
1464	54-57-01	Amend	611
1464	54-57-03 (1)	Amend	611
1464	65-01-16	Amend	611
1464	65-02-01	Amend	611
1464	65-02-01.2	Repeal	611
1464	65-02-03.3	Amend	611
1464	65-02-22	Amend	611
1464	65-02-33	Amend	611
1464	65-02-34	Repeal	611
1464	65-04-19.3	Amend	611
1464	65-04-32	Amend	611
1464	65-05-29 (3) (b)	Amend	611
1464	65-05.1-08 (2)	Amend	611
1472	50-11.1-15	Create	423
1477	50-24.1-02.3	Amend	427

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1482	37-28-02	Amend	312
1482	37-28-03	Amend	312
1484	37-17.1-07.1 (2) (c)	Amend	305
1489	57-38-30.6	Amend	553
1490	16.1-08.1-01 (5)	Amend	184
1490	16.1-08.1-03.2	Amend	184
1490	16.1-08.1-03.9 (1)	Amend	184
1491	36-09-17	Amend	297
1491	36-09-20	Amend	297
1491	36-09-20.1	Amend	297
1491	36-09-22	Amend	297
1491	36-09-23	Amend	297
1495	24-06-28 (1)	Amend	237
1495	24-06-29	Amend	237
1496	36-21-19	Create	298
1500	5-02-06	Amend	91
1505	57-15-63.2	Create	537
1509	17-04-06	Create	189
1510	37-19.1-04 (1)	Amend	311
1514	24-02-37	Amend	234
1530	44-01-05	Amend	381
1534	39-08-01 (2)	Amend	335
1534	39-08-01.2	Amend	335
1540	50-01.2-03.2 (3)	Amend	410
1549	4-41-02	Amend	79
1551	53-06.2-11	Amend	455
1554	40-47-01.1	Amend	350
1561	65-05-08.2	Create	620
1567	20.1-03-36.1 (4)	Amend	207
1575	54-52-01 (11)	Amend	512
1575	54-52-05 (3)	Amend	512
1575	54-52-06.4	Create	512
1575	54-52-17 (3)	Amend	512
2001	54-03-20 (7) (c)	Amend	633
2002	27-02-02	Amend	30
2002	27-05-03	Amend	30
2003	15-10-37 (11)	Amend	31
2003	15-10-37 (3)	Amend	31
2003	15-62.2-02	Amend	31
2003	15-62.2-05	Create	31
2003	15.1-01-02	Amend	31
2006	57-43.3-06	Amend	34
2012	24-01-53	Create	40
2012	24-02-35.2	Amend	40
2012	24-02-44	Amend	40
2012	39-04-19	Amend	40
2012	39-04.2-03	Repeat	40
2012	54-27-19	Amend	40
2012	54-27-19.1	Amend	40
2012	54-27-26	Create	40
2012	57-40.3-10	Amend	40
2012	57-43.1-06	Amend	40
2012	57-43.2-04.2	Amend	40
2014	54-17.5-01	Amend	42
2014	54-18-19	Create	42
2014	54-18-20	Create	42
2018	15-69-01 (6)	Create	631
2018	15-69-02 (1)	Amend	631
2018	15-69-04 (1)	Amend	631
2018	15-69-04 (2)	Amend	631
2018	15-69-04 (3)	Amend	631
2018	15-69-05 (1)	Amend	631
2018	15-69-05 (3)	Amend	631
2018	15-69-05 (4)	Amend	631
2018	15-69-05 (5)	Amend	631
2018	54-18-21	Create	631
2018	54-44.1-18	Create	631
2018	54-60-16 (2)	Amend	631
2018	54-60-17	Amend	631
2018	54-60-26	Create	631
2021	15.1-02-18	Amend	49
2023	54-61-02.1	Create	51
2026	28-32-15	Amend	277
2028	29-26-22	Amend	281
2029	54-35-24	Amend	504
2031	57-06-14.1	Amend	533
2032	57-39.2-04.2 (1)	Amend	564
2032	57-39.2-04.2 (3)	Amend	564
2032	57-40.2-04.2 (1)	Amend	564
2032	57-40.2-04.2 (3)	Amend	564
2033	57-38-01.8	Amend	546
2034	57-51.1-03 (5)	Amend	576
2035	57-39.2-04 (41)	Amend	562
2035	57-39.2-04.2 (1)	Amend	562
2035	57-40.2-04.2 (1)	Amend	562
2035	57-61-01.4	Amend	562
2036	57-60-01 (11)	Amend	584
2036	57-60-02 (2)	Amend	584
2037	57-39.2-04.5	Amend	565
2038	15-10-12	Amend	157
2038	54-44.1-04	Amend	157

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2038	54-44.1-06	Amend		157
2038	54-44.1-11	Amend		157
2039	43-15-03	Amend		365
2039	43-15-12	Amend		365
2039	43-15-13.1	Repeal		365
2039	43-15-13.2	Repeal		365
2039	43-15-13.3	Repeal		365
2039	43-15-13.4	Repeal		365
2039	43-15-13.5	Repeal		365
2039	43-15-13.6	Repeal		365
2039	43-15-25	Amend		365
2039	43-15-26	Amend		365
2039	43-15-30	Repeal		365
2040	57-39.2-01	Create		558
2040	57-39.2-01 (23)	Create		558
2040	57-39.2-04.7	Create		558
2041	54-59-21	Amend		518
2042	14-05-22	Amend		149
2042	14-05-23	Amend		149
2042	14-09-00.1	Create		149
2042	14-09-04	Repeal		149
2042	14-09-05	Repeal		149
2042	14-09-05.1	Amend		149
2042	14-09-06	Repeal		149
2042	14-09-06.1	Repeal		149
2042	14-09-06.2	Amend		149
2042	14-09-06.3	Amend		149
2042	14-09-06.4	Amend		149
2042	14-09-06.6	Amend		149
2042	14-09-07	Amend		149
2042	14-09-28	Repeal		149
2042	14-09-29	Create		149
2042	14-09-30	Create		149
2042	14-09-31	Create		149
2042	14-09-32	Create		149
2042	14-09-33	Create		149
2042	14-09.2-01	Create		149
2042	14-09.2-02	Create		149
2042	14-09.2-03	Create		149
2042	14-09.2-04	Create		149
2042	14-09.2-05	Create		149
2042	14-09.2-06	Create		149
2042	14-09.2-07	Create		149
2042	14-09.2-08	Create		149
2044	23-09.3-01.1 (1)	Amend		218
2044	23-16-01.1 (1)	Amend		218
2045	20-10.2-02 (1) (m)	Amend		421
2046	23-01-37	Create		213
2048	23-01.2-03	Create		214
2048	23-27-04.6	Amend		214
2050	23-27-02	Amend		223
2050	23-27-04 (1)	Amend		223
2050	23-27-04.7	Amend		223
2050	23-27-04.8	Create		223
2051	57-51.1-07.3	Amend		581
2052	57-02-27.2 (10)	Amend		531
2053	57-39.2-04 (6)	Amend		560
2054	24-02-02.3	Amend		233
2055	65-01-15.1 (1)	Amend		610
2056	65-05-28 (2)	Amend		623
2057	65-05-12.2 (11)	Amend		622
2058	65-02-21.1	Amend		615
2058	65-05-28 (3)	Amend		615
2059	65-02-35	Create		617
2059	65-02-36	Create		617
2060	40-63-01 (7)	Amend		353
2060	40-63-03 (1) (g)	Amend		353
2060	40-63-04	Amend		353
2060	40-63-05	Amend		353
2064	44-08-04 (2) (d)	Amend		386
2064	54-03-20 (1)	Amend		386
2064	54-03-20 (2)	Amend		386
2064	54-03-20 (3)	Amend		386
2064	54-03-20 (7)	Amend		386
2064	54-06-09 (1)	Amend		386
2064	54-35-10	Amend		386
2067	39-06-03.1 (1)	Amend		330
2067	39-06-14 (1)	Amend		330
2069	27-05.2-03 (1)	Amend		262
2071	65-01-03	Amend		609
2072	14-12.2-01	Amend		152
2072	14-12.2-02	Amend		152
2072	14-12.2-03	Amend		152
2072	14-12.2-03.1	Create		152
2072	14-12.2-04	Amend		152
2072	14-12.2-05	Amend		152
2072	14-12.2-06	Amend		152
2072	14-12.2-07	Amend		152
2072	14-12.2-08	Amend		152
2072	14-12.2-09	Amend		152
2072	14-12.2-10	Amend		152
2072	14-12.2-11	Amend		152

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2072	14-12.2-12	Amend	152
2072	14-12.2-12.1	Create	152
2072	14-12.2-12.2	Create	152
2072	14-12.2-13	Amend	152
2072	14-12.2-14	Amend	152
2072	14-12.2-15	Amend	152
2072	14-12.2-16	Amend	152
2072	14-12.2-17	Amend	152
2072	14-12.2-18	Amend	152
2072	14-12.2-19	Amend	152
2072	14-12.2-20	Amend	152
2072	14-12.2-22	Amend	152
2072	14-12.2-23	Amend	152
2072	14-12.2-24	Amend	152
2072	14-12.2-25	Amend	152
2072	14-12.2-26	Amend	152
2072	14-12.2-28	Amend	152
2072	14-12.2-29	Amend	152
2072	14-12.2-30	Amend	152
2072	14-12.2-31	Amend	152
2072	14-12.2-32	Amend	152
2072	14-12.2-32.1	Create	152
2072	14-12.2-33	Amend	152
2072	14-12.2-33.1	Amend	152
2072	14-12.2-33.2	Amend	152
2072	14-12.2-33.3	Amend	152
2072	14-12.2-33.4	Amend	152
2072	14-12.2-33.5	Amend	152
2072	14-12.2-34	Amend	152
2072	14-12.2-35	Amend	152
2072	14-12.2-36	Amend	152
2072	14-12.2-37	Amend	152
2072	14-12.2-38	Amend	152
2072	14-12.2-39	Amend	152
2072	14-12.2-40	Amend	152
2072	14-12.2-41	Amend	152
2072	14-12.2-43	Amend	152
2072	14-12.2-44	Amend	152
2072	14-12.2-45	Amend	152
2072	14-12.2-46	Amend	152
2072	14-12.2-46.1	Amend	152
2072	14-12.2-46.3	Create	152
2072	14-12.2-46.4	Create	152
2072	14-12.2-47	Repeal	152
2072	14-12.2-47.1	Create	152
2072	14-12.2-47.10	Create	152
2072	14-12.2-47.11	Create	152
2072	14-12.2-47.12	Create	152
2072	14-12.2-47.13	Create	152
2072	14-12.2-47.2	Create	152
2072	14-12.2-47.3	Create	152
2072	14-12.2-47.4	Create	152
2072	14-12.2-47.5	Create	152
2072	14-12.2-47.6	Create	152
2072	14-12.2-47.7	Create	152
2072	14-12.2-47.8	Create	152
2072	14-12.2-47.9	Create	152
2072	14-12.2-48	Amend	152
2072	14-12.2-49	Amend	152
2073	59-04.2-17	Amend	586
2073	59-04.2-28	Amend	586
2074	28-35-01	Create	278
2074	28-35-02	Create	278
2074	28-35-03	Create	278
2074	28-35-04	Create	278
2074	28-35-05	Create	278
2074	28-35-06	Create	278
2074	28-35-07	Create	278
2074	28-35-08	Create	278
2074	28-35-09	Create	278
2074	28-35-10	Create	278
2074	28-35-11	Create	278
2074	28-35-12	Create	278
2074	28-35-13	Create	278
2074	28-35-14	Create	278
2074	28-35-15	Create	278
2074	28-35-16	Create	278
2074	28-35-17	Create	278
2074	28-35-18	Create	278
2074	28-35-19	Create	278
2074	28-35-20	Create	278
2074	30.1-29-02	Repeal	278
2074	30.1-29-32	Repeal	278
2077	15-52-10	Amend	167
2077	15-52-15	Amend	167
2077	15-52-16	Amend	167
2077	15-52-18	Amend	167
2077	15-52-20	Amend	167
2077	15-52-26	Amend	167
2077	15-52-27	Amend	167
2078	52-02-02.1	Repeal	441
2079	15-52-01	Amend	165

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2079	15-52-02	Amend	165
2079	15-52-05	Amend	165
2079	15-52-07	Amend	165
2079	15-52-08	Amend	165
2079	15-52-09	Amend	165
2079	15-52-15	Amend	165
2079	15-52-29	Amend	165
2080	15-20.4-02	Amend	161
2080	15-20.4-03 (3)	Amend	161
2080	15-20.4-04 (1)	Amend	161
2080	15-20.4-06	Amend	161
2080	15-20.4-07	Repeal	161
2080	15-20.4-15 (1)	Amend	161
2080	15-20.4-18	Create	161
2081	15-52-03	Amend	166
2081	15-52-04	Amend	166
2081	15-52-30	Amend	166
2081	15-52-31	Amend	166
2082	15-10-18.2	Amend	158
2082	15-10-19.1	Amend	158
2085	15-01-02.1	Amend	153
2085	15-02-08	Amend	153
2085	15-03-01.1	Amend	153
2085	15-03-02	Amend	153
2085	15-03-04	Amend	153
2085	15-03-05.1	Amend	153
2085	15-03-05.2	Repeal	153
2085	15-06-40	Amend	153
2085	15-08-01	Repeal	153
2086	24-02-42	Amend	235
2088	57-51.1-07.4	Repeal	582
2089	57-02-24	Repeal	544
2089	57-02-25	Repeal	544
2089	57-38-01.3 (1) (1)	Create	544
2090	57-39.2-04 (12)	Amend	561
2091	33-06.1-12 (4)	Amend	454
2091	33-06.1-12 (5)	Amend	454
2092	39-21-55	Repeal	341
2093	57-34-05	Amend	540
2094	43-12.1-04	Amend	361
2095	38-08-24	Repeal	318
2095	38-22-01	Create	318
2095	38-22-02	Create	318
2095	38-22-03	Create	318
2095	38-22-04	Create	318
2095	38-22-05	Create	318
2095	38-22-06	Create	318
2095	38-22-07	Create	318
2095	38-22-08	Create	318
2095	38-22-09	Create	318
2095	38-22-10	Create	318
2095	38-22-11	Create	318
2095	38-22-12	Create	318
2095	38-22-13	Create	318
2095	38-22-14	Create	318
2095	38-22-15	Create	318
2095	38-22-16	Create	318
2095	38-22-17	Create	318
2095	38-22-18	Create	318
2095	38-22-19	Create	318
2095	38-22-20	Create	318
2095	38-22-21	Create	318
2095	38-22-22	Create	318
2095	38-22-23	Create	318
2096	50-11-05.1	Amend	88
2097	50-25.1-02 (3)	Amend	434
2097	50-25.1-11	Amend	434
2098	25-03.1-02 (12)	Amend	239
2098	25-03.1-04	Amend	239
2098	25-03.1-08	Amend	239
2098	25-03.1-10	Amend	239
2098	25-03.1-21	Amend	239
2098	25-03.1-25	Amend	239
2098	25-03.1-34	Amend	239
2099	43-25-02 (2)	Amend	371
2099	43-25-02 (5)	Create	371
2099	43-25-03	Amend	371
2099	43-25-04	Amend	371
2099	43-25-05	Amend	371
2099	43-25-05.1	Amend	371
2099	43-25-06	Amend	371
2099	43-25-07	Amend	371
2099	43-25-09	Amend	371
2099	43-25-10	Amend	371
2099	43-25-13	Amend	371
2099	43-25-14	Amend	371
2099	43-25-18	Amend	371
2100	6-09.15-03	Amend	105
2101	52-04-05 (6)	Amend	443
2101	52-04-06 (2)	Amend	443
2102	52-04-11 (2)	Amend	444
2103	6-09-15	Amend	102

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2104	26.1-04-03 (21)	Create	244
2105	13-04.1-13	Amend	140
2105	13-05-10	Amend	140
2105	13-08-15	Amend	140
2105	13-09-21	Amend	140
2106	52-06-02 {1}	Amend	448
2106	52-06-02 {2}	Amend	448
2107	52-04-01.1	Amend	442
2108	52-06-01	Amend	447
2109	26.1-25.1-07	Amend	251
2110	10-30.5-04	Amend	480
2110	54-34.3-01	Amend	480
2110	54-34.3-03	Amend	480
2110	54-34.3-04	Amend	480
2110	54-34.3-05	Repeal	480
2110	54-34.3-13 (2)	Amend	480
2110	54-34.3-15	Amend	480
2110	54-34.4-01	Amend	480
2110	54-34.4-02	Amend	480
2110	54-34.4-03 (1)	Amend	480
2110	54-34.4-04	Repeal	480
2110	54-60-03	Amend	480
2110	54-60-04 (3)	Amend	480
2110	54-60-06	Amend	480
2110	54-60-11	Repeal	480
2110	54-60-17	Amend	480
2110	54-60-24	Create	480
2110	54-60-25	Create	480
2111	54-23.4-01 (7)	Amend	477
2112	39-06.1-05 (10)	Amend	331
2112	39-06.1-09	Amend	331
2112	39-06.1-10 (3) (b) (13)	Amend	331
2112	39-10-26	Amend	331
2113	43-30-06	Amend	373
2114	12-44.1-06	Amend	116
2114	12-44.1-21 (7)	Amend	116
2114	12-44.1-21 (8)	Create	116
2115	12-1-32-02	Amend	135
2116	12-47-21 (7)	Amend	118
2116	12-47-21 (8)	Create	118
2116	12-47-36 (10)	Create	118
2116	12-47-38	Repeal	118
2118	27-09.1-14	Amend	265
2119	29-17-03	Amend	280
2119	29-17-05	Repeal	280
2119	29-17-06	Repeal	280
2119	29-17-07	Repeal	280
2119	29-17-08	Repeal	280
2119	29-17-10	Repeal	280
2119	29-17-11	Repeal	280
2119	29-17-13	Amend	280
2120	27-09.1-08 (2) (a)	Amend	264
2120	29-01-06	Amend	264
2121	27-05-01	Amend	261
2121	27-05-02.1	Amend	261
2122	12-55.1-05	Amend	120
2122	12-59-02	Amend	120
2122	12-59-07	Amend	120
2122	12-59-08	Amend	120
2122	12-59-09	Amend	120
2122	12-59-10	Amend	120
2122	12-59-15	Amend	120
2122	27-06-06	Amend	120
2124	60-02-19.1	Amend	590
2124	60-02.1-01 (4)	Amend	590
2124	60-02.1-11	Amend	590
2125	4-09-01 (21)	Amend	73
2125	4-09-02 (1)	Amend	73
2125	4-09-03 (2)	Amend	73
2125	4-09-13	Amend	73
2125	4-09-17.1	Amend	73
2125	4-09-25	Amend	73
2125	4-11-21	Amend	73
2126	6-09.11-03 (2)	Amend	104
2126	6-09.11-05 (4)	Amend	104
2126	6-09.11-06 (1)	Amend	104
2126	6-09.9-02 (1)	Amend	104
2126	6-09.9-03 (2)	Amend	104
2127	54-17-34 (2)	Amend	472
2127	54-17-34.2	Amend	472
2128	54-53-02	Amend	516
2129	54-17-38	Repeal	521
2129	54-17-39	Repeal	521
2129	54-44.4-02 (5)	Amend	521
2129	54-60.1-01 (2)	Amend	521
2129	54-63-00.1	Create	521
2129	54-63-01	Amend	521
2129	54-63-03	Amend	521
2130	52-04-22	Amend	445
2131	54-44-04.6	Amend	507
2132	49-01-02	Amend	402
2133	37-15-10	Amend	303

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2133	37-15-14.1	Amend	303
2133	37-15-22	Create	303
2134	12-48-03.1	Amend	119
2134	12-48-03.2	Amend	119
2135	54-11-01	Amend	466
2136	6-09.4-06	Amend	103
2137	49-02-02 (6)	Amend	403
2137	49-05-04	Amend	403
2137	49-05-04.2	Amend	403
2137	49-05-04.3	Amend	403
2137	49-05-16	Amend	403
2139	47-31-01	Create	401
2139	47-31-02	Create	401
2139	47-31-03	Create	401
2139	47-31-04	Create	401
2139	47-31-05	Create	401
2139	47-31-06	Create	401
2139	47-31-07	Create	401
2139	47-31-08	Create	401
2140	38-14.1-24 (18)	Amend	316
2140	38-14.2-14 (2)	Amend	316
2141	38-11.2-01	Create	315
2141	38-11.2-02	Create	315
2141	38-11.2-03	Create	315
2141	38-11.2-04	Create	315
2141	38-11.2-05	Create	315
2141	38-11.2-06	Create	315
2141	38-11.2-07	Create	315
2141	38-11.2-08	Create	315
2142	54-59-05	Amend	517
2142	54-59-08	Amend	517
2142	54-59-11	Amend	517
2143	14-02.4-19	Amend	145
2144	26.1-21-12	Amend	250
2145	54-11-08	Amend	467
2146	20.1-02-16.6	Repeal	467
2147	24-02-47	Create	238
2148	39-04-4.3	Create	324
2149	39-04-10.11	Amend	322
2149	39-04-10.12	Amend	322
2149	39-04-10.13 (3)	Amend	322
2149	39-04-10.8	Amend	322
2149	39-04-14	Amend	322
2149	39-04-14.1	Amend	322
2149	39-04-18 (2) (j)	Amend	322
2149	39-04-19 (3)	Amend	322
2149	39-04-22	Amend	322
2149	39-04-23	Amend	322
2149	39-04-26	Amend	322
2150	39-04-02 (1)	Amend	320
2150	39-05-05 (1) (f)	Amend	320
2152	12-60-24 (2) (99)	Create	379
2152	43-53-01	Amend	379
2152	43-53-05	Amend	379
2152	43-53-06	Amend	379
2152	43-53-07	Amend	379
2152	43-53-08	Amend	379
2152	43-53-09	Amend	379
2152	43-53-10	Amend	379
2152	43-53-12	Amend	379
2153	21-10-01 (1)	Amend	514
2153	39-03.1-08.2	Amend	514
2153	39-03.1-09 (3)	Create	514
2153	39-03.1-10.1 (9) (1) (a)	Amend	514
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2153	39-03.1-11.2	Amend	514
2153	54-52-03 (4)	Amend	514
2153	54-52-05 (4)	Create	514
2153	54-52-17 (6)	Amend	514
2153	54-52-17 (7)	Amend	514
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2153	54-52-28	Amend	514
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2154	54-52.1-03.2 (1)	Amend	513
2154	54-52.1-03.3 (2)	Amend	513
2156	30.1-24-05	Amend	284
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2158	50-24-1-32	Create	429
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2160	6-01-01.1 (1)	Amend	141
2160	13-03.1	Repeal	141
2160	13-04.1-02.1	Amend	141
2160	13-04.1-04	Amend	141
2160	13-04.1-05	Amend	141
2160	13-04.1-05.1	Create	141
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2162	50-11.1-02	Amend	422
2162	50-11.1-02.1	Amend	422
2162	50-11.1-03	Amend	422
2162	50-11.1-03.1	Repeal	422
2162	50-11.1-04	Amend	422
2162	50-11.1-06	Amend	422
2162	50-11.1-06.1	Amend	422
2162	50-11.1-06.2	Amend	422
2162	50-11.1-07	Amend	422
2162	50-11.1-07.1	Amend	422
2162	50-11.1-07.2	Amend	422
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2162	50-11.1-08	Amend	422
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2162	50-11.1-10	Amend	422
2162	50-11.1-11	Amend	422
2162	50-11.1-11.1	Amend	422
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2163	37-17.3-09	Create	309
2163	37-17.3-10	Create	309
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2168	11-19.1-06	Amend	212
2168	11-19.1-07	Amend	212
2168	11-19.1-08	Amend	212
2168	11-19.1-10	Amend	212
2168	11-19.1-11	Amend	212
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2193	61-24.5-09	Amend	600
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2195	23-06.6-20	Amend	217
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2198	50-06.4-09	Create	418
2198	50-24.1-33	Create	418
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2209	12.1-32-15 (1) (a)	Amend	139
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2214	26.1-08-12	Amend	246
2215	53-06.1-01	Amend	450
2215	53-06.1-12 (2)	Amend	450
2215	53-06.1-12.3	Amend	450
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2218	19-03.1-23	Amend	198
2220	6-03-64	Amend	98
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2228	19-10-20	Amend	193
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2232	28-21-03	Amend	275
2232	28-21-03.1	Create	275
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2234	47-19-02	Amend	396
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2242	4-1-02-09	Amend	72
2242	4.1-03-08	Amend	72
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2268	43-19.1-07	Amend	368
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2297	57-33.2-20	Create	539
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